

**Albert Vs. John Wilson**

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**SooperKanoon Citation :** [sooperkanoon.com/1097645](http://sooperkanoon.com/1097645)

**Court :** Kerala

**Decided On :** Oct-30-2013

**Judge :** Honourable Mr.Justice S.S.Satheesachandran

**Appellant :** Albert

**Respondent :** John Wilson

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN WEDNESDAY, THE30H DAY OF OCTOBER20138TH KARTHIKA, 1935 FAO.No. 7 of 2012 ()  
----- AGAINST THE

ORDER

/

JUDGMENT

IN AS1882010 of I ADDL..D.C., TRIVANDRUM AGAINST THE

ORDER

/

JUDGMENT

IN OS4372001 of I ADDL.M.C., NEYYATTINKARA APPELLANT(S):1ST RESPONDENT/PLAINTIFF ----- ALBERT AGED57YEARS

S/O PONNUMUTHAN NADAR RESIDING AT PUTHUVAL PUTHEN VEEDU, MARIYAPURAM ARAYOOR DESOM, CHENKAL VILLAGE NEYYATTINKARA. BY ADVS.SRI.R.S.KALKURA SRI.M.S.KALESH SMT.A.V.PRIYA SRI.HARISH GOPINATH SRI.V.VINAY MENON RESPONDENT(S):APPELLANT AND RESPONDENTS2TO8DEFENDANTS62 TO7 & 8

----- 1. JOHN WILSON, AGED43YEARS S/O. PONNUMUTHAN NADAR, NEELAGIRI VEEDU, ARAYOOR DESOM CHENKAL VILLAGE, NEYYATTINKARA TALUK CHENKAL P.O. - 695132.

2. SAM DAVID, AGED53YEARS S/O PONNUMUTHAN NADAR, GLORY BHAVAN THOTTINKARA MARIYAPURAM ARAYOOR DESOM CHENKAL VILLAGE NEYYATTINKARA CHENKAL P.O. - 695 132.

3. PAUL ROBERT, AGED51YEARS S/O PONNUMUTHAN NADAR, RESIDING AT VIJAYAVIHAR KOCHOTTUKONAM, CHANKAL DESOM NEYYATTINKARA CHENKAL P.O. - 695 132.

4. EDWARD JOHN, AGED47YEARS S/O PONNUMUTHAN NADAR, RESIDING AT VINEETH BHAVAN MARIYAPURAM, ARAYOOR DESOM, CHANKAL DESOM NEYYATTINKARA, CHENKAL P.O.-695132.

5. SOBIN G. DAS, AGED45YEARS D/O SOPHYAL, RESIDING AT HIMA COTTAGE KOZHIVILA KALIYIKKAVILA, PARASSALA PARASSALA P.O. - 695 502.

6. RAZAL ABANEEZAR, AGED43YEARS S/O. PONNUMUTHAN NADAR, PUTHUVAL PUTHEN VEEDU MARIYAPURAM, ARAYOOR DESOM CHENKAL VILLAGE NOW RESIDING NEAR RAGHU INTERNATIONAL KODAIKKANAL APPER LAKE ROAD DINDIGAL DISTRICT TAMIL NADU - 620101.

7. VIMALA RANI,, AGED39YEARS D/O. SOPHYAL, PLANKALA VEEDU, AYIRADESOM KARODE VILLAGE NEYYATTINKARA TALUK KARODE P.O. - 695 506.

8. SHAJI S/O. RABI, RIJIN COTTAGE NEAR POOZHANADU P.O OTTASEKHARAMANGALAM DESOM NEYYATTINKARA TALUK POOZHANADU P.O. - 695 125. R1 BY ADV. SRI.G.S.REGHUNATH R4 BY ADV. SRI.D.SAJEEV THIS FIRST APPEAL FROM

ORDER

S HAVING BEEN FINALLY HEARD ON 11-10-2013, THE COURT ON 30-10-2013 DELIVERED THE FOLLOWING: S.S.SATHEESACHANDRAN,J.

===== F.A.O No. 7 of 2012  
===== Dated, this the 30th day of October, 2013

JUDGMENT

Appeal is by the plaintiff in a Suit for Partition challenging the Order of remand passed by the learned Additional District Judge, Thiruvananthapuram. Setting aside the preliminary decree passed by the trial court the case was remanded for passing a fresh preliminary decree in terms of the directions given.

2. Challenge raised against the Order of remand lie within a narrow compass, and, a detailed narration of the pleadings of the parties to the suit is not called for. Suffice to state that three items of properties were scheduled in the plaint as A B and C schedules F.A.O.7/2012 2 for partition among the sharers. A and C schedule properties, both of them, belonged to Ponnumuthan Nadar, father of plaintiff, defendants 1 to 7 and one Stella Rani, who predeceased him. Stella Rani had died issueless, and, her husband was later impleaded in the suit as additional 8th defendant. Plaintiff claimed his share in A and C schedules alleging that he and defendants 1 to 7 have equal rights in those properties. B schedule property having an extent of 1 acre was obtained by plaintiff under Ext.A3 sale deed and, later, he assigned one half of that property in favour of Stella Rani. On the death of Stella Rani without issues the above property reverted back to the plaintiff was his claim, with an alternative case that if that one half property in B schedule was found partible, his share has to be partitioned and allotted to him.

3. In this appeal challenging the Order of remand passed by the court below the issue relates F.A.O.7/2012 3 to the directions given by the learned District Judge

over the allotment of shares in A and B schedule properties. With respect to C schedule property, which was found partible among the sharers by the trial court there was no further challenge and that finding was affirmed by the lower appellate court.

4. The trial court accepting the case of plaintiff has held that A schedule is partible among the children of Ponnumuthan Nadar, namely, plaintiff and defendants 1 to 7. Sixth defendant had resisted the claim for partition over A schedule property contending that under Ext.B1 deed 19.5 cents in A schedule with a building and three shop rooms had been gifted to him by Ponnumuthan Nadar. Rest of the property excluding B1 alone was available for partition was his case. Previously Ponnumuthan Nadar had executed a gift deed in favour of sixth defendant giving him 22 cents in A schedule, and later revoking that gift F.A.O.7/2012 4 Ext.B1 deed for lesser extent was executed. The trial court held that Ext.B1 cannot be acted upon in view of the previous gift. A schedule, along with 'C' schedule, was directed to be partitioned equally among the plaintiff and defendants 1 to 7. B schedule property was directed to be divided into two equal shares, and one such share, 50 cents, was directed to be partitioned among the sharers. In the present appeal directions given by the lower appellate court for partition of A and B schedule properties are under challenge.

5. I do not find much merit in the challenges raised for modification of shares to be allotted with respect to A schedule by the lower appellate court reversing the conclusion formed by the trial court over the validity of Ext.B1 gift deed executed by Ponnumuthan Nadar in favour of sixth defendant. Previously another gift, Ext.A6, had been executed by Ponnumuthan Nadar in respect of portions of 'A' schedule in favour of sixth F.A.O.7/2012 5 defendant, and revoking that gift Ext.B1 was executed later was the reason which prompted the trial court to hold that Ext.B1 gift was unacceptable. None of the parties produced the revocation deed cancelling Ext.A6 gift deed. No material was also tendered before the court that Ext.A6 gift deed was accepted by sixth defendant, and that its revocation later and execution of another gift deed, Ext.B1, was invalid. In fact there was not much difference in the gift made over portions of A schedule in favour of sixth defendant under Ext.A6 and Ext.B1 gift deeds. Whereas Ext.A6 provided 22 cents with

buildings, after its revocation, under Ext.B1 gift deed a lesser extent alone was provided. While Ext.A1 reserved the right of plaintiff to reside in the building situated the gifted property till his life that was modified in Ext.B1 gift deed limiting such right till his marriage. Difference in extent made and modification of right of plaintiff to reside in F.A.O.7/2012 6 the building are immaterial when there was no evidence to conclude that Ext.A1 gift deed had been accepted by sixth defendant and it could not have been revoked later by Ponnumuthan Nadar, the donor. So much so the conclusion formed by lower appellate court that what is available for division among the sharers in A schedule is only the remaining extent excluding the property covered by Ext.B1 gift deed executed in favour of the sixth defendant, which was found to be valid and binding on all parties, is proper and correct. There is no merit in the challenges raised over the directions given with respect to division of A schedule properties recognising the right conferred under Ext.B1 gift deed in favour of the sixth defendant. The lower appellate court upholding the claim of sixth defendant under Ext.B1 held that the property excluding B1 in 'A' schedule alone is available for partition among sharers.

6. Third defendant in the suit has claimed F.A.O.7/2012 7 right over B schedule property on a settlement deed executed by Sophial, mother of Stella Rani, after the death of Ponnumuthan Nadar. After Stella Rani's death her, property devolved upon her mother Sophial and, thus she was competent to execute the settlement deed was the case of the third defendant to claim right over B schedule property.

7. Ponnumuthan Nadar, Stella Rani and Sophial died on 18.8.1992, 2.5.1992 and 28.4.1999 respectively. Stella Rani predeceased her parents. She died issueless, and 8th defendant is her husband. What she obtained in B schedule under Ext.A4 sale deed executed by plaintiff is only 50 cents out of the total extent of 1 acre in that schedule. So much so 50 cents out of 1 acre exclusively belongs to the plaintiff and the rest, 50 cents, assigned in favour of Stella Rani under Ext.A4 sale deed executed by him, that alone, is partible among those who are entitled to succeed her share. Court below taking note that at the F.A.O.7/2012 8 time of Stella Rani's death her parents and also husband were alive considered the relevant provisions under the Indian Succession Act as to how shares would devolve upon her successors. Plaintiff's claim that on the death of Stella Rani the

property would revert back to him was repelled. Similarly the claim of third defendant based on Ext.A7 deed executed by Sophial the mother of Stella rani was also found not wholly acceptable but only to the extent she was entitled to succeed to the share of Stella Rani provided Ext.A7 had been validly executed by Sophial. Third defendant had also raised a contention that 8th defendant, husband of Stella Rani, had transferred his right over B schedule property in his favour. No such deed of transfer was produced by him to prove the assignment claimed. So much so to enable the third defendant to prove Ext.A7 and also produce deed of transfer allegedly executed by 8th defendant in his favour and for redetermination of the shares which F.A.O.7/2012 9 are due to the sharers over B schedule property the case was remanded by the lower appellate court after setting aside the preliminary decree. 8. After hearing the counsel on both sides at length, I do not find any reason to interfere with the Order of remand passed by the court below with the directions given thereunder. However it is noticed that the provisions of Indian Succession Act referred to with respect the division and shares of Stella Rani who died intestate have to be clarified to avoid mistakes in determining the rights of the sharers. At the time of death of Stella Rani her parents and also husband were alive. Since she left behind no lineal descendant the rules of distribution of her property after deducting the share of the widower has to be done in accordance with Section 42 to 48 of the Indian Succession Act. On her death her husband widower would get one half and her father the other half. So far as the claim of the widower is concerned, he F.A.O.7/2012 10 would get the same share as available to widow in respect of the property of her deceased husband as under Section 33 and 33A of the Indian Succession Act is the prescription under section 35 of that Act. So much so in the present case what the plaintiff and defendants 1 to 7 could claim from the property of Stella Rani is only over the one half right which had devolved upon her father Ponnumuthan Nadar who was alive on her death. Here also as rightly pointed out by the court below Sophial, widow of Ponnumuthan Nadar and mother of plaintiff and defendants 1 to 7 could also claim as a sharer out of the estate of Ponnumuthan Nadar on his death. The finding made by the lower appellate court that one half of B schedule property which was assigned in favour of Stella Rani by plaintiff is available for partition in accordance with the right of succession applicable to the

parties under the Indian Succession Act, and also providing an opportunity to defendant No.3 to F.A.O.7/2012 11 substantiate his claim over portions of that property under documents purported to have been executed by Sophial and also 8th defendant, is fully justified on the facts and circumstances present in the case. Similarly the direction given with respect to plaint A schedule property that only portion thereof excluding Ext.B1 alone is available for partition among the sharers, with C schedule property, for partition, is also found to be proper and correct. The Order of remand in such circumstances is shown to be unassailable, and the appeal is found to be meritless.

9. While turning down the appeal, the trial court is directed to take note of the relevant provisions under the Indian Succession Act in determining the shares of the parties over portion of B schedule property which was assigned by plaintiff in favour of Stella Rani under Ext.A7 deed. Of course the rights of the sharers will be limited to the remaining property of Stella Rani in F.A.O.7/2012 12 case third defendant establish validity of Ext.A7 deed and also deed of transfer, if any, from the eighth defendant husband of Stella Rani. Appeal is dismissed directing both sides to suffer their costs. S.S.SATHEESACHANDRAN JUDGE tpi/- F.A.O.7/2012 13 ----- A.S.No.893 of 1996 & CROSS OBJECTION -----

JUDGMENT

3d October,2013

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