

Devadas Vs. Bhanumathi Amma

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Court : Kerala

Decided On : Jan-30-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Devadas

Respondent : Bhanumathi Amma

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN THURSDAY, THE 30TH DAY OF JANUARY 2014 10TH MAGHA, 1935 RSA.No. 112 of 2014 () ----- AS. NO.34/2004 OF SUB COURT, CHERTHALA. OS. 483/2000 OF PRINCIPAL MUNSIF COURT, CHERTHALA. APPELLANTS/APPELLANTS/ADDL. PLAINTIFFS: ----- 1. DEVADAS, S/O.NARAYANA PILLAI, AGED 58 YEARS, MADATHINKAL, PALLIPPURAM MURI, PALLIPPURAM VILLAGE.

2. GEETHA, D/O.DEVAKIAMMA, AGED 56 YEARS, MADATHINKAL, PALLIPPURAM MURI, PALLIPPURAM VILLAGE.

3. SUDHA, D/O.DEVAKIAMMA, AGED 55 YEARS, MADATHINKAL, PALLIPPURAM MURI, PALLIPPURAM VILLAGE.

4. LETHA, D/O.DEVAKIAMMA, AGED 50 YEARS, MADATHINKAL, PALLIPPURAM MURI, PALLIPPURAM VILLAGE.

5. MINI, D/O.DEVAKIAMMA, AGED48YEARS, MADATHINKAL, PALLIPPURAM MURI, PALLIPPURAM VILLAGE.
6. SUNITHA, W/O.RAMESH, AGED36YEARS, KUNNATHUVEEDU, AROOR MURI, AROOR VILLAGE, CHERTHALA.
7. ROHITH, S/O.RAMESH, KUNNATHUVEEDU, AROOR MURI, AROOR VILLAGE, CHERTHALA, (16) MINOR, REP. BY6H APPELLANT MOTHER SUNITHA. BY ADV. SRI.K.V.SADANANDA PRABHU.
- RESPONDENTS/RESPONDENTS/DEFENDANTS:
- 1. BHANUMATHI AMMA, W/O.KUMARA PILLAI, AGED70YEARS, KIZHAKKEKODUVELIL, AROOR MURI, AROOR VILLAGE, PIN-688 548. RSA.No. 112 of 2014 2. SIVADASAN PILLAI, S/O.KUMARA PILLAI, AGED50YEARS, KIZHAKKEKODUVELIL, AROOR MURI, AROOR VILLAGE, PIN-688 548.
3. RAMACHANDRAN PILLAI, S/O.KUMARA PILLAI, AGED48YEARS, KIZHAKKEKODUVELIL, AROOR MURI, AROOR VILLAGE, PIN-688 548.
4. REGHUNATHAN, S/O.KUMARA PILLAI, AGED46YEARS, MAHESH BHAVAN, PALLIPPURAM MURI, PALLIPPURAM VILLAGE, PIN-688 546.
5. SARASWATHI AMMA, D/O.BHANUMATHI AMMA, AGED55YEARS, KIZHAKKEKODUVELIL, AROOR MURI, AROOR VILLAGE, PIN-688 548.
6. SARALADEVI, D/O.BHANUMATHI AMMA, AGED52YEARS, KAILASAM, WARD NO. XXI, CHERTHALA MUNICIPALITY, PIN-688 524.
7. PRASANNAKUMARI, D/O.BHANUMATHI AMMA, AGED51YEARS, SREEVILASAM, PALLIPPURAM MURI, PALLIPPURAM VILLAGE, PIN-688 548.
8. PUSHPALATHA, D/O.BHANUMATHI AMMA, AGED49YEARS, BROTHERS BHAVAN, VELLAKINAR WARD, ALAPPUZHA, PIN-688 524.
9. VIJAYALEKSHMI AMMA, D/O.KARTHIYAYINIAMMA, AGED60YEARS, KULANGARAPARAMBIL, PALLIPPURAM MURI, PALLIPPURAM VILLAGE, PIN-688 548.

10. RAJARAJESWARI, D/O.KARTHIYAYINIAMMA, AGED58YEARS, CHAMBARAYIL, AROOR MURI, AROOR VILLAGE, PIN-688 548.

11. SEETHADEVI, D/O.KARTHIYAYINIAMMA, AGED55YEARS, CHAMBARAYIL, AROOR MURI, AROOR VILLAGE, PIN-688 548.

12. JANAKI, W/O.MADHAVAN PILLAI, AGED70YEARS, 'ASWATHI', MARARIKULAM NORTH MURI, MARIKULAM NORTH VILLAGE, PIN-688 545.

13. PRASANTH, S/O.MADHAVAN PILLAI, AGED48YEARS, 'ASWATHI', MARARIKULAM NORTH MURI, MARIKULAM NORTH VILLAGE, PIN-688 545.

RSA.No. 112 of 2014 14. INDIRAMMA, W/O.ARUMUGHAN PILLAI, AGED70YEARS, JAYALAL MANDIRAM, PALLIPPURAM VILLAGE, PIN-688 548.

15. A.JAYAN, S/O.ARUMUGHAN PILLAI, AGED50YEARS, AMRUTHATHIL, PALLIPPURAM VILLAGE, PIN-688 548.

16. A. LAL, S/O.ARUMUGHAN PILLAI, AGED45YEARS, JAYALAL MANDIRAM, PALLIPPURAM MURI, PALLIPPURAM VILLAGE, PIN-688 548. ADV. SRI.B.PRAMOD (CAVEATOR). THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON3001-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rs. P.BHAVADASAN, J.

----- R.S.A. No. 112 of 2014 -----
----- Dated this the 30th day of January, 2014

JUDGMENT

Relying on Ext.A6 document and contending that, that supersedes the decree as evidenced by Ext.A5, it is alleged that two decrees are inconsistent to each other and going by the decision reported in Kochu Pennu Appi Pennu and others v. Kalyambi Nanana and others [AIR1985 Kerala 66], the latter should prevail.

2. In the suit, O.S.No.1/1955, the plaint schedule property was allotted to Thoppil Krishna Pillai. The contention is that even though a preliminary decree was passed, no final decree was passed and the property continued to be with the

Tharavadu. Subsequently, O.S.No.57/55 was laid challenging the gift deed in favour of Thoppil Krishna Pillai said to have been given by Sankara Pillai, the predecessor. In the said suit, it was found that the gift deed is invalid as it had not taken effect and it was set aside. R.S.A. No. 112/2014 -2- 3. It is contended that, therefore, it must be presumed that the property belonged to Sankara Pillai and if that be so, the plaintiffs are entitled to get a share in the property.

4. The contesting defendants on the other hand contended that in pursuance to the preliminary decree in O.S. No. 1/1955, Krishna Pillai continued to be in possession and he has exercised his acts of possession as could be seen from Exts.B10 and 11 etc. It is also pointed out that Sankara Pillai also received allotment under the said decree and he was holding properties separately. It was therefore pointed out that neither Sankara Pillai nor his children had any right over the plaint schedule property. On that premises, it was contended that the suit was dismissed.

5. The evidence consist of Exts.A1 to A7 were marked by the plaintiffs. The defendant examined Dws 1 and 2 and had Exts. B1 to B13 marked. Ext.X1 was marked as third party exhibit. R.S.A. No. 112/2014 -3- 6. On an appreciation of the evidence in the case, the courts below came to the conclusion that there is no evidence at all to show that Sankara Pillai had any right over the suit property or that at any point of time, he has exercised ownership or possession over the suit property. On the other hand, according to both the courts below, going by Ext.B6 judgment, though it is a preliminary decree, it is clear that Thoppil Krishna Pillai was in possession and on his death, possession continued with the legal heirs of Thoppil Krishna Pillai. Holding that the plaintiffs have miserably failed to show that Sankara Pillai had any right over the suit property, the suit was dismissed which was confirmed in appeal.

7. In the Second Appeal, the learned counsel appearing for the appellant contended that the decree in O.S.No. 57/55 overrides the decree in O.S.No.1/55 and the decree in O.S.No.1/55 is no longer in existence. If as a matter of fact, the parties to O.S.No.1/55 had a contention R.S.A. No. 112/2014 -4- that Thoppil Krishna Pillai had received property by way of allocation and not by way of gift, the

said contention would have found a place in the subsequent suit as O.S.No. 57/55. Having not done so and having suffered a decree, it is contended that the property continues to be in the possession of Sankara Pillai.

8. It is significant to notice that none gave oral evidence on behalf of the plaintiffs and claim is therefore based solely on the documentary evidence. Both the courts below have concurrently found that in the suit in O.S.No.1/1955, evidenced by Ext.B6 judgment, there is allocation as far as Sankara Pillai is also concerned. Then, both the courts below found that there is nothing in the evidence to show that Sankara Pillai was also in possession of the plaint schedule property, especially, when separate property is seen allotted to him.

9. On the other hand, both the courts below, on an appreciation of the evidence, found that Krishna Pillai R.S.A. No. 112/2014 -5- continued to be in possession though a preliminary decree alone was passed and he has exercised his acts of possession as could be evidenced by Exts.B10 and B11 documents.

10. It is difficult to accept the contention that by virtue of the decree in O.S.57/1955, the decree in O.S.No.1/1955 is wiped off and is of no consequences. The subject matter of the subsequent suit was the gift deed said to have been executed by Sankara Pillai in favour of Krishna Pillai. True, it is observed therein that the property had not gone out of the possession of Sankara Pillai. But that is only with respect to the question of validity and taking effect of the gift. The allotment to Krishna Pillai was under Ext.B6 i.e., the decree in O.S.No. 1/1955. It is also significant to notice that by Ext.B6, Sankara Pillai had been allotted with other properties, and the plaintiffs have no case that Sankara Pillai had not taken possession of those properties. R.S.A. No. 112/2014 -6- 12. The courts below were also justified in coming to the conclusion that only because no final decree was passed in pursuance to the Ext.B6, preliminary decree, it could not be said that Sankara Pillai is the exclusive owner. The property reverts to the Tharavadu and all the members of the Tharavadu are entitled to a share and on that ground also, the suit has to fail.

13. Whatever that be, there is no evidence at all to show that Sankara Pillai had exclusive right over the suit property so as the plaintiffs to claim through him. On

the other hand, apart from Ext.B6, the document produced by the defendant namely, Exts. B10 and B11 and also the decree awarding maintenance show that Krishna Pillai was exercising his acts of possession of the suit property and actual possession of the same.

14. Since the exclusive possession of Sankara Pillai or exclusive right of Sankara Pillai has not been established, the courts below were perfectly justified in dismissing the R.S.A. No. 112/2014 -7- suit on that basis. No grounds are made out interfere with the findings of the courts below. The result is that the appeal is without merits and is accordingly dismissed. P.BHAVADASAN JUDGE ds

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