

Othayoth Kunhikrishnan vs Othayoth Karunakaran

Othayoth Kunhikrishnan vs Othayoth Karunakaran

SooperKanoon Citation : sooperkanoon.com/1326461

Court : Kerala

Decided On : Jul-15-2024

Judge : Honourable Mr. Justice M.a.Abdul Hakhim

Appeal No. : RSA/248/2024

Appellant : Othayoth Kunhikrishnan

Respondent : Othayoth Karunakaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM
MONDAY, THE 15TH DAY OF JULY 2024 / 24TH ASHADHA, 1946 RSA
NO. 247 OF 2024 AGAINST THE THE ORDER/JUDGMENT DATED
06.12.2023 IN AS NO.3 OF 2018 OF ASSISTANT SESSIONS
COURT/ADDITIONAL SUB COURT, THALASSERY ARISING OUT OF
ORDER/JUDGMENT DATED 23.08.2016 IN OS NO.118 OF 2013 OF
MUNSIFF COURT, KUTHUPARAMBA APPELLANT/S: OTHAYOTH
KUNHIKRISHNAN AGED 72 YEARS S/O KUNHIRAMAN NAIR NO
OCCUPATION, OTHAYOTH HOUSE, VEKKALAM AMSOM DESOM,
VAYANNUR VIA., CHITTARIPARAMBA THALASSERY TALUK, PIN -
670650 BY ADVS. P.RAHUL P.P.RAMACHANDRAN BINDU S. ABHINA

L. RESPONDENT/S: MUTTERI PUTHIYA VEETIL SATHEESAN AGED 58 YEARS S/O T.V.KUNHAPPA NAIR, AGRICULTURIST, 'SREENILAYAM', SIVAPURAM AMSOM KAHILERI DESOM, P.O. KANHILERI, THALASSERY TALUK, PIN - 670551 THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 15.07.2024, ALONG WITH RSA.248/2024, 249/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM MONDAY, THE 15TH DAY OF JULY 2024 / 24TH ASHADHA, 1946 RSA NO. 248 OF 2024 AGAINST THE ORDER/JUDGMENT DATED 06.12.2023 IN AS NO.48 OF 2016 OF ASSISTANT SESSIONS COURT/ADDITIONAL SUB COURT, THALASSERY ARISING OUT OF THE ORDER/JUDGMENT DATED 25.02.2016 IN OS NO.151 OF 2013 OF MUNSIF COURT, KUTHUPARAMBA APPELLANT/S: OTHAYOTH KUNHIKRISHNAN AGED 72 YEARS S/O KUNHIRAMAN NAIR, UNEMPLOYED, OTHAYOTH HOUSE, VEKKALAM AMSOM DESOM, VAYANNUR VIA., CHITTARIPARAMBA, THALASSERY TALUK, PIN - 670650 BY ADVS. P.RAHUL P.P.RAMACHANDRAN BINDU S. ABHINA L. RESPONDENT/S:

1 OTHAYOTH KARUNAKARAN AGED 62 YEARS S/O KUNHIRAMAN, PENSIONER, OTHAYOTH HOUSE, VEKKALA DESOM, P.O. NIDUMPOIL, THALASSERY TALUK, PIN - 670650 2 OTHAYOTH KUNHIKANNAN AGED 60 YEARS S/O KUNHIRAMAN NAIR, AGRICULTURIST, OTHAYOTH HOUSE, VEKKALAM AMSOM DESOM, NIDUMPOIL, THALASSERY TALUK,, PIN - 670650 3 OTHAYOTH RAJU AGED 58 YEARS S/O KUNHIRAMAN NAIR, AGED 58 YEARS, AGRICULTURIST, OTHAYOTH HOUSE, VEKKALAGEAMSOM -3-

DESOM, P.O.NIDUMPOIL, THALASSERY TALUK, PIN - 4 OTHAYOTH
RAVEENDRAN AGED 55 YEARS S/O KUNHIRAMAN NAIR,
AGRICULTURIST, OTHAYOTH HOUSE, VEKKALAM AMSOM DESOM,
P.O.NIDUMPOIL, THALASSERY TALUK, PIN - 670650 5 OTHAYOTH
CHANDRAN AGED 53 YEARS S/O KUNHIRAMAN
NAIR, AGRICULTURIST, OTHAYOTH HOUSE, VEKKALAM AMSOM
DESOM, P.O. NIDUMPOIL, THALASSERY TALUK, PIN - 670650 6
OTHAYOTH PREMAVALLI AGED 51 YEARS S/O KUNHIRAMAN NAIR,
NO OCCUPATION, OTHAYOTH HOUSE, VEKKALAM AMSOM
DESOM, P.O. NIDUMPOIL, THALASSERY TALUK, PIN - 670650 7
MUTTERI PUTHIYAVEETIL JANARDHANAN, AGED 72 YEARS S/O
RAMUNNI NAIR, AGED 72 YEARS, EX-SERVICE MAN,
KUTHUPARAMBA AMBILAD DESOM, P.O.NIRMALAGIRI,
THALASSERY TALUK, PIN - 670643 8 C.SCARIYA AGED 58 YEARS ,
S/O ANTONY, VEKKALAM AMSOM DESOM, P.O.NIDUMPOIL,
THALASSERY TALUK, PIN - 670650 THIS REGULAR SECOND
APPEAL HAVING COME UP FOR

ADMISSION ON 15.07.2024, ALONG WITH RSA.247/2024 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: -4-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM
MONDAY, THE 15TH DAY OF JULY 2024 / 24TH ASHADHA, 1946 RSA
NO. 249 OF 2024 AGAINST THE ORDER/JUDGMENT DATED
06.12.2023 IN AS NO.5 OF 2018 OF ASSISTANT SESSIONS
COURT/ADDITIONAL SUB COURT, THALASSERY ARISING OUT OF
THE ORDER/JUDGMENT DATED 23.08.2016 IN OS NO.119 OF 2013
OF MUNSIFF COURT, KUTHUPARAMBA APPELLANT/S: OTHAYOTH
KUNHIKRISHNAN AGED 62 YEARS S/O KUNHIRAMAN NAIR, NO
OCCUPATION, OTHAYOTH HOUSE, VEKKALAM AMSOM DESOM,
VAYANNUR VIA., CHITTARIPARAMBA THALASSERY TALUK, PIN -

670650 BY ADVS. P.RAHUL P.P.RAMACHANDRAN BINDU S. ABHINA L. RESPONDENT/S: T.K. SIVARAM AGED 55 YEARS S/O KUNHIRAMAN NAIR, WORKING IN PRIVATE COMPANY, RESIDING AT VENGARI AMSOM, KARUVANSSERY DESOM, KOZHIKODE TALUK, KOZHIKODE DISTRICT -THROUGH P.A. HOLDER OTHAYOTH KARUNAKARAN, S/O KUNHIRAMAN NAIR, AGED 54 YEARS, AGRICULTURIST, OTHAYOTH HOUSE, VEKKALAM AMSOM DESOM, THALASSERY TALUK., PIN - THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 15.07.2024, ALONG WITH RSA.247/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -5-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM
MONDAY, THE 15TH DAY OF JULY 2024 / 24TH ASHADHA, 1946 RSA NO. 253 OF 2024 AGAINST THE ORDER/JUDGMENT DATED 06.12.2023 IN AS NO.2 OF 2018 OF ASSISTANT SESSIONS COURT/ADDITIONAL SUB COURT, THALASSERY ARISING OUT OF THE ORDER/JUDGMENT DATED 28.08.2016 IN OS NO.326 OF 2013 OF MUNSIF COURT, KUTHUPARAMBA APPELLANT/S: OTHAYOTH KUNHIKRISHNAN AGED 72 YEARS S/O KUNHIRAMAN NAIR, UNEMPLOYED, OTHAYOTH HOUSE,VEKKALAM AMSOM DESOM, VAYANNUR VIA., CHITTARIPARAMBA, THALASSERY TALUK, PIN - 670650 BY ADVS. P.RAHUL P.P.RAMACHANDRAN BINDU S. ABHINA L. RESPONDENT/S:

1 OTHAYOTH KARUNAKARAN AGED 62 YEARS S/O, KUNHIRAMAN NAIR, AGRICULTURIST, OTHAYOTH HOUSE, VEKKALAM AMSOM AND DESOM, NIDUMPOYIL P O., THALASSERY TALUK,, PIN - 670650 2 KOROTHAN DINESAN AGED 50 YEARS S/O. NANU, COOLIE, KOROTHAN HOUSE, VEKKALAM AMSOM AND DESOM, NIDUMPOYIL P O., VIA. CHITTARIPARAMBA, THALASSERY TALUK,, PIN - 670650 3 N.S. RAVEENDRAN AGED 62 YEARS FATHER'S

NAME NOT KNOWN, COOLIE, NELLIYATTU HOUSE, VEKKALAM AMSOM AND DESOM, NIDUMPOYIL P O., THALASSERY TALUK,, PIN - 670650 -6-

4 SURENDRAN. K. K AGED 52 YEARS S/O. KRISHNAN, COOLIE, KUNNUMBRON HOUSE, VEKKALAM AMSOM AND DESOM, NIDUMPOYIL P.O., THALASSERY, PIN - 670650 5 MUTTERI PUTHIYA VEETIL JANARDHANAN, AGED 72 YEARS S/O. RAMUNNI NAIR, EX-SERVICE MAN, KUTHUPARAMBA AMSOM, AMBILAD DESOM, NIRMALAGIRI P.O., PIN - THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 15.07.2024, ALONG WITH RSA.247/2024 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -7-

JUDGMENT

Dated this the 15th day of July, 2024 (R. S. A. Nos. 247, 248, 249 and 253 of 2024) The Appeals are filed by same person challenging the concurrent findings of the Trial Court as well as the Appellate Court.

2. Since all these Appeals arise from a common judgment of

the First Appellate Court dismissing four appeals filed by the appellant - A.S.No.48 of 2016 arising from O.S.No.151 of 2013, A.S.No.2 of 2018 arising from O.S.No.326 of 2013, A.S.No.3 of 2018 arising from O.S.No.118 of 2013 and A.S.No.5 of 2018 arising from O.S.No.119 of 2013, all these appeals are disposed of by a common judgment.

3. R. S. A. No. 248 of 2024 arising from A.S.No.48 of 2016 arising from O.S.No.151 of 2013 is treated as the leading case.

4. The 6th defendant in O.S.No.151 of 2013 has filed R. S. A. No. 248 of 2024. The parties are referred according to their status -8- in O.S.No.151 of 2013.

5. O. S. No. 151 of 2013 is filed for partition of the Plaint

Schedule Item Nos. 1 and 2 properties belonging to Othayoth Devi Amma among the plaintiff and defendants 1 to 5 therein who are her children. The defendants 6 to 8 were impleaded in the said suit since permanent prohibitory injunction was sought against them as they attempted to trespass into the Plaintiff Schedule Item No.1 Property on the basis of a claim by the 6th defendant on strength of Ext.B1 Will alleged to have been executed by the said Devi Amma. The validity of the said Will was considered in that suit.

6. The other suits namely O. S. Nos. 118, 119 and 326 of

2013 were filed when the plaintiff schedule properties therein which is part of the Plaintiff schedule Item No.1 Property in O. S. No. 151 of 2013 were attempted to be trespassed by 6th defendant in O. S. No. 151 of 2013 and his associates on the strength of Ext. B1 will. So the fate of O.S. No. 118, 119 and 326 of 2013 depends upon the decision in O. S. No. 151 of 2013. -9-

7. At the time when these three suits were disposed of, O. S.

No. 151 of 2013 was decreed finding that Devi Amma had not executed Ext.B1 Will with sound disposing state of mind and A. S. No. 48 of 2016 was pending before the First Appellate Court. All the above three suits were decreed by the Trial Court taking note of the decree in O. S. No. 151 of 2013 ordering partition, rejecting the contention of the 6th defendant regarding the strength of Ext. B1 Will.

8. The plaintiffs filed O. S. No. 151 of 2013 for partition of

the Plaintiff Schedule Item Nos. 1 and 2 properties belonging to Othayoth Devi Amma among the plaintiff and defendants 1 to 5 therein who are her children with the averments that Devi Amma derived Plaintiff Schedule Item No. 1 Property on the death of her brother Balan Nair since Balan Nair died without any issues and she was the only surviving sister; that the Plaintiff Schedule Item No. 2 Property is derived by Devi Amma on the basis of Ext. A14 Will executed by her husband late Sri. Kunhiraman Nair. -10-

9. The 6th defendant is the son of the husband of Devi Amma

late Sri. Kunhiraman Nair through Lakshmi Amma who was the elder sister of the sister of Devi Amma. Kunhiraman Nair married Devi Amma after the death of his first wife Lakshmi Amma.

10. The 6th defendant alone contested the suit contending that

item No. 1 property exclusively belonged to him on the basis of Ext. B1 Will executed by Devi Amma. Ext. B1 is a registered Will dated 19.01.2013. The 6th defendant examined himself as DW2 and the other two witnesses as DW1 and DW3. DW1 is an attester to Ext. B1 Will. DW3 is a Panchayat Member who also deposed the circumstances leading to the execution of Ext. B1 Will.

11. The Trial Court rejected the claim raised by the 6 th

defendant on the strength of Ext. B1 Will finding that Devi Amma had not executed Ext.B1 Will with a sound disposing state of mind and ordered partition of the plaint schedule properties in six equal shares allotting each of the shares to plaintiff and defendants 1 to 5 and further issuing a permanent prohibitory injunction -11- against the 6th respondent from trespassing into the plaint schedule property and committing waste over the same. The 6 th defendant filed Appeal before the First Appellate Court and the same was dismissed confirming the judgment and decree passed by the Trial Court.

12. I heard the Counsel for the Appellant.

13. The Counsel for the Appellant contended that the Trial

Court as well as the Appellate Court committed error in discarding Ext. B1 Will. According to him, Ext. B1 Will is proved as required under Section 63 of the Indian Succession Act, 1925 and also Section 68 of the Indian Evidence Act, 1872, by examining DW1 who is one of the attesting witnesses. According to him, there is no suspicious circumstance to doubt the execution of Ext. B1 Will and the pleadings of the plaintiff itself would reveal that the execution of the Will by Devi Amma is admitted by the plaintiff and supporting defendants.

14. On going through the impugned judgments, I find that

-12- regarding the execution of Ext.B1 Will, the finding is in favour of the 6th defendant. But the contention of the plaintiff is that Devi Amma executed Ext.B1 Will at a time when she was not conscious as she had been suffering from Cancer. Ext. B1 Will was executed on 19.01.2013 and Devi Amma died on 19.02.2013 on account of Cancer. It is seen from the pleadings that the original claim of the 6th defendant was that since the Plaint Schedule Item No. 1 property belonged to Balan Nair, brother of his mother Lakshmi Amma and Devi Amma, he is entitled to get half of the Plaint Schedule Item No. 1 property as the sole legal heir of his mother. Later, he claimed on the basis of Ext. B1 Will when the present suit for partition was filed. It is seen that Devi Amma had been paying land tax till her death and Devi Amma had all the revenue records with respect to the plaint schedule item No. 1 property with her. The said Land Tax Receipts were produced by the plaintiff as Exts. A2, A3 and A4 series. But without obtaining those documents from Devi Amma, the 6 th defendant obtained the details of the property from the Village -13- Office which is revealed from Exts. X1, X2 and X3 for execution of Ext. B1 Will. Subsequent to Ext. B1, the 6th defendant obtained Ext. B2 Consent Letter from Devi Amma to take usufructs from Plaint Schedule Item No. 1 property and on the strength of the same, the 6th defendant filed O. S. No. 53 of 2013 in which the 6th defendant took out a Commission. Ext.A15 Commission Report in O. S. No. 53 of 2013 shows that on the date of inspection of the property on 13.02.2013 also Devi Amma was not conscious and she was not able to make any rational judgment.

15. Admittedly, the 6th defendant married a lady from

another community and had been residing separately. Devi Amma had been residing with the 4th defendant during the period in which Ext. B1 Will was executed. Even though the 6th defendant claimed that the 4th defendant and his wife were present during the execution of Ext. B1 Will, they were not made as attesting witnesses to Ext. B1 Will. The evidence of DWs 1 to 3 would show that Ext.B1 Will was executed with the active participation of DWs 1 and 2 and that it is DW2 who instructed for preparation -14- of Ext.B1 Will. A specific finding was entered into with respect to the state of mind of Devi Amma that she was unable to execute Ext.B1 Will on the date of execution of the same. With regard to the

execution of Ext.B1 Will also there is contradiction in the oral evidence of DW1 and DW2. Ext. B1 Will shows that it was executed on 19.01.2013 and the same was registered on 21.01.2013. On the other hand, the evidence of DWs 1 and 2 is that the entire process of execution and registration took place on the same day.

16. In view of the aforesaid circumstances, the Trial Court

and the Appellate Court found that the Will is clouded with suspicion and the same cannot be relied on. I do not find any reason to interfere with the judgment and decree passed by the Trial Court in O. S. No. 151 of 2013 which is confirmed by the Appellate Court in A. S. No. 48 of 2016. R. S. A. No. 248 of 2024 is liable to be dismissed.

17. The learned Counsel for the Appellant pointed out that in

-15- Relief No. (b) in O.S.No.326 of 2013, the defendants are directed to restore Exts. A2 and A3 plot in Ext. C2 plan to its original condition within one month by a mandatory injunction. According to the learned counsel, even going by the pleadings of the plaintiff in the O. S. No. 326 of 2013, it is the defendants 1 to 3 who made attempts to construct a road through the plaint schedule property. Hence, the 5th defendant therein who is the appellant before this Court could not be saddled with the liability to restore the plaint schedule property back to the original condition. It is seen that the contention of the plaintiff is that the defendants 1 to 3 attempted to construct the road as per the instructions given by the 5th respondent. Here also the 5th respondent is claiming right over the property on the strength of the aforesaid Will. The defendants 1 to 5 filed a joint Written Statement in which it is stated that they have tried only to fill soil in the existing way to make it convenient. So it is clear that it is the joint act on the part of the defendants 1 to 5. Hence, there is nothing wrong in directing the 5th respondent also to restore the plaint schedule property to its -16- original condition. Since the claims of the appellant in R. S. A Nos. 247, 249, 253 of 2024 are based on the aforesaid Will, the same are also liable to be dismissed. The questions of law raised in the Memorandum of Appeal do not arise in the matter. Hence I dismiss all the Regular Second Appeals without costs. Sd/- M. A. ABDUL HAKHIM JUDGE Eb

