

Balan vs Ashokan

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Court : Kerala

Decided On : Jun-30-2022

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : RFA/545/2014

Appellant : BALAN

Respondent : Ashokan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
THURSDAY, THE 30TH DAY OF JUNE 2022 / 9TH ASHADHA, 1944
AGAINST THE JUDGMENT AND DECREE DATED 31/03/2014 IN OS
63/2012 OF SUB COURT, VADAKARA APPELLANTS/PLAINTIFFS IN
OS 63/2012 - SUB COURT, VATAKARA: 1 BALAN, S/O DEVAKI, AGED
68 YEARS, AGRICULTURIST, RESIDING AT KALATHINTHAZHE
KUNIYIL, URALUNGAL AMSOM DESOM, POST MADAPPALLY
COLLEGE, VATAKARA TALUK, KOZHIKODE DISTRICT, KERALA
STATE. 2 GIREESH BABU, S/O.SARADA, AGED 51 YEARS
AGRICULTURIST, RESIDING AT PRANAVAM, ERAMALA AMSOM
DESOM, POST ORKKATTERI, VATAKARA TALUK, KOZHIKODE

DISTRICT, KERALA STATE. BY ADVS. SRI.B.KRISHNAN SRI.R.PARTHASARATHY RESPONDENT/DEFENDANT IN OS 63/2012 - SUB COURT, VATAKARA: ASHOKAN, S/O.KORUMBI, AGED 57 YEARS PENSIONER, RESIDING AT CHENAMKULANGARA, CHORODE AMSOM ERAPURAM DESOM, POST CHORODE, VATAKARA TALUK, KOZHIKODE DISTRICT, KERALA STATE. BY ADVS.SRI.P.B.KRISHNAN SRI.P.M.NEELAKANDAN SRI.SABU GEORGE SRI.P.B.SUBRAMANYAN THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 30.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The question came up for consideration in this appeal is whether Ext.B2 Will is a mutual Will or a joint Will and whether the trial court is justified in finding that it is a joint Will and the dismissal of the suit for partition on that ground.

2. It is a suit for partition by the first and

second plaintiffs, who are the two legatees

two persons, brother by name KunhIRaman and sister Janu with respect to their respective properties. In paragraph 3 of the Will there is a clause to the effect that: "i n a"# \$ %&' (") n* + n ,-. / 0 /' 1 2 23 4"567 8\$ \$9 . ; <\$ =>? + a"? @7 "

3. It is submitted by the learned counsel for the

appellants that the interpretation given by the trial court to the abovesaid deposition/clause incorporated in Ext.B1 Will is incorrect as the trial court has used the word he/she so as to interpret the said

clause. Further, it was submitted

exclusively to the defendant has no effect over the

property given under the testament by her brother KunhIRaman and it will operate only with respect to her property covered by the abovesaid Will. On the other

hand, it is submitted by the learned counsel for the respondent that the trial court found that the Will, Ext.B2, is a joint Will in as much as there are several clauses in the said Will to show the intention of the testators, the brother and sister. It is now well settled that the normal precedents of construction with respect to other document cannot be

applied as such in a testament and it has to be interpreted with respect to what was actually intended by the parties and it is not permissible to add or substitute anything in order to remove any repugnance, unless there are compelling reasons to do so. The Will has to be construed as such without any ambiguity or scope of any divergent hypothesis. The legal position was very much settled by the Apex Court as early as in the year 1964 in Ramachandran Shenoy and Another v. Mrs.Hilda Brite and Others (1964 KHC 561) =(AIR 1964 SC 1323).

4. This court had the occasion to consider the difference between a joint Will and mutual Will followed by the decisions rendered by the Apex Court in Shiva Nath Prasad v. State of W.B and others (2006 KHC 145), in Princelal C. v. G. Prasanna Kumari and Others (2009 KHC 636) and laid down the ingredients which would differentiate a joint Will from that of a mutual Will. When the deposition under the Will is with a clause that it would come

into effect only after the death of both the testators, with a clause authorizing the survivor to hold the property with the right of alienation and transfer or create encumbrance it would fall under the category of joint Will, wherein on the death of one of the parties, the Will would not operate with respect to the property of deceased. But, it will continue in the hands of the surviving testator with the right of alienation, encumbrance etc.. The clause incorporated in paragraph 3 of the Will has to be interpreted so as to give full effect to the clause

in reference to the intention of the testators. Paragraph 3 of the Will as extracted above cannot be read or interpreted in piecemeal. On the other hand, it is a single sentence specifying that in the event of death of the first party, the property will vest with the second party or in the event of death of second party, it will vest with the first party with

the right of alienation and possession with all liberties and the deposition under the Will would come into play only on the death of both the parties. It cannot be separated into two sentences so as to have an extraneous interpretation that the Will is

totally silent regarding the deposition of property on the death of first party. Such an interpretation is highly extraneous and totally destructive and cannot be accepted even for a moment especially when the language employed and its literary meaning is clear free from any kind of ambiguity or repugnancy. In paragraph 6 also, there is another clause that the Will would come into effect only after the death of both the testator, that would also make the document within the scope of a joint Will. As such, the suit

for partition will not stand. The decree and judgment

of the trial court deserves no interference. The appeal hence fails, dismissed. No costs. Sd/- P.SOMARAJAN JUDGE msp

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