

Alice vs Joy

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SooperKanoon Citation : sooperkanoon.com/1921928

Court : Kerala

Decided On : Sep-19-2019

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : RFA/411/2012

Appellant : ALICE

Respondent : JOY

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
THURSDAY, THE 19TH DAY OF SEPTEMBER 2019 / 28TH BHADRA,
1941 RFA.No.411 OF 2012 AGAINST THE COMMON JUDGMENT AND
DECREE IN OS 878/2008 DATED 28-02-2011 OF ADDITIONAL SUB
COURT, IRINJALAKUDA APPELLANTS/PLAINTIFFS:

1 ALICE, AGED 55 YEARS D/O. AMBOOKAN THARAKANPARAMBIL
KOCHANTHONY, KIZHAKUMMURI DESOM, PUTHENCHIRA
VILLAGE, 2 KOCHUMERY, AGED 47 YEARS D/O. AMBOOKAN
THARAKANPARAMBIL KOCHANTHONY, KIZHAKUMMURI DESOM,
PUTHENCHIRA VILLAGE, 3 FONCY, AGED 43 YEARS D/O.

AMBOOKAN THARAKANPARAMBIL KOCHANTHONY,
KIZHAKUMMURI DESOM, PUTHENCHIRA VILLAGE, 4 TENNY, AGED
44 YEARS S/O. PEREPPADAN ANTHONY, KADUKUTTY DESOM,
KALLUR THEKKUMMURI VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT. 5 LALI, AGED 40 YEARS S/O. PEREPPADAN
ANTHONY, KADUKUTTY DESOM, KALLUR THEKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT. BY ADVS.
SRI.M.SASINDRAN SRI.A.ARUNKUMAR

RESPONDENTS/DEFENDANTS: 1 JOY, AGED 56 YEARS D/O.
AMBOOKAN THARAKANPARAMBIL KOCHANTHONY,
KIZHAKUMMURI DESOM, PUTHENCHIRA VILLAGE,
MUKUNDAPURAM TALUK-691585, THRISSUR DISTRICT. 2 SHERLY,
AGED 43 YEARS W/O. AMBOOKAN THARAKAN PARAMBIL ANTO,
KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK-
691585, THRISSUR DISTRICT. RFA.No.411 OF 2012 - 2 -

3 AGHIL, AGED 17 YEARS (MINOR), S/O. SHERLY, KOMBODY
DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK-691585,
THRISSUR DISTRICT, REPRESENTED BY MOTHER SHERLY. 4
PATHROSE, AGED 75 YEARS, S/O. PUNNELIPARAMBIL PATHROSE,
KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK-
691585, THRISSUR DISTRICT. 5 JAMES, AGED 45 YEARS, S/O.
PUNNELIPARAMBIL PATHROSE, KOMBODY DESOM, ALOOR
VILLAGE, MUKUNDAPURAM TALUK-691585, THRISSUR DISTRICT. 6
JOSHY, AGED 37 YEARS, S/O. PUNNELIPARAMBIL GEVARGEHESE,
KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK-
691585, THRISSUR DISTRICT. 7 JOY, AGED 35 YEARS, S/O.
CHETHALAN PAILAN, KODAKARA VILLAGE & DESOM,
MUKUNDAPURAM TALUK-691585, THRISSUR DISTRICT. 8 LILLY,
AGED 48 YEARS D/O. AMBOOKAN THARAKANPARAMBIL
KOCHANTHONY, PUTHENCHIRA VILLAGE & DESOM,
MUKUNDAPURAM TALUK-691585, THRISSUR DISTRICT. R1 BY

ADV. SRI.K.N.BALASUBRAMANIAN R2 BY ADV. SRI.G.SREEKUMAR (CHELUR) THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON

19.09.2019, ALONG WITH RFA.484/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
THURSDAY, THE 19TH DAY OF SEPTEMBER 2019 / 28TH BHADRA,
1941 RFA.No.484 OF 2012 AGAINST THE JUDGMENT AND DECREE
IN OS 403/2008 DATED 28-02-2011 OF ADDITIONAL SUB COURT,
IRINJALAKUDA APPELLANTS/DEFENDANTS 8 TO 12:

1 ALICE, AGED 55 YEARS D/O.AMBOOKAN THARAKANPARAMBIL
KOCHANTHONY KIZHAKUMMURI DESOM, PUTHENCHIRA VILLAGE,
2 KOCHUMERY, AGED 47 YEARS (DIED) D/O.AMBOOKAN
THARAKANPARAMBIL KOCHANTHONY KIZHAKUMMURI DESOM,
PUTHENCHIRA VILLAGE 3 FONCY, AGED 43 YEARS,
D/O.AMBOOKAN THARAKANPARAMBIL KOCHANTHONY
KIZHAKUMMURI DESOM, PUTHENCHIRA VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT 4 TENNY, AGED 44
YEARS S/O.PEREPPADAN ANTHONY, KADUKUTTY DESOM,
KALLUR THEKKUMMURI VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT 5 LALI, AGED 40 YEARS S/O.PEREPPADAN
ANTHONY, KADUKUTTY DESOM, KALLUR THEKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT ADDL. VARGHESE,
A6 RESIDING AT PAZHAYATTIL, KIZHAKUMMURI DESOM,
UTHENCHIRA VILLAGE, MUKUNDAPURAM TALUK, THRISSUR
DISTRICT. ADDL. NITHIN, A7 AGED 26 YEARS, S/O VARGHESE,
PAZHAYATTIL, PUTHENCHIRA VILLAGE, RFA.No.484 OF 2012 - 2 -

ADDL. NIPU VARGHESE, AGED 24 YEARS, A8 S/O VARGHESE, PAZHAYATTIL, PUTHENCHIRA VILLAGE, * LEGAL HEIRS OF DECEASED APPELLANT NO.2 ARE IMPEADED IN THE PARTY ARRAY AS ADDITIONAL A2 TO A8 VIDE ORDER DATED 13.10.2016 IN I.A No.2317/2016. BY ADVS. SRI.M.SASINDRAN SRI.A.ARUNKUMAR RESPONDENTS/PLAINTIFFS/DEFENDANTS 1 TO 7:

1 JOY, AGED 56 YEARS, D/O.AMBOOKAN THARAKANPARAMBIL KOCHANTHONY, KIZHAKUMMUR DESOM, PUTHENCHIRA VILLAGE, MUKUNDAPURAM TALUK PIN 691588 THRISSUR DISTRICT 2 SHERLY, AGED 43 YEARS W/O.AMBOOKAN THARAKANPARAMBIL ANTO, KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK, PIN 691585 THRISSUR DISTRICT 3 AGHIL, AGED 21 YEARS, S/O.SHERLY, KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK, PIN 691585, THRISSUR DISTRICT 4 PATHROSE, AGED 75 YEARS, S/O.PUNNELIPARAMBIL GEVARGHESE, KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK, PIN 691585, THRISSUR DISTRICT 5 JAMES, AGED 45 YEARS, S/O PUNNELIPARAMBIL PATHROSE, KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK, PIN 691585 THRISSUR DISTRICT 6 JOSHLY, AGED 37 YEARS, S/O.PUNNELIPARAMBIL PATHROSE, KOMBODY DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK, PIN 691585 THRISSUR DISTRICT 7 JOY, AGED 35 YEARS, S/O.CHETHALAN PAILAN, KODAKARA VILLAGE & DESOM MUKUNDAPURAM TALUK, PIN 680684, THRISSUR DISTRICT

* 8 LILLY, AGED 48 YEARS (DIED) D/O.AMBOOKAN THARAKANPARAMBIL KOCHANTHONY, PUTHENCHIRA VILLAGE AND DESOM, MUKUNDAPURAM TALUK, PIN 691588, THRISSUR DISTRICT. RFA.No.484 OF 2012 - 3 - IT IS RECORDED THAT 8TH RESPONDENT DIED AND THE APPELLANTS 1,3,4 AND 5 AND THE

RESPONDENT NO.1 IN THE PARTY ARRAY ARE THE LEGAL HEIRS OF THE DECEASED R8 VIDE ORDER DATED 13/10/16 IN IA.2319/16. R1 BY ADV. SRI.K.G.BALASUBRAMANIAN R2-7 BY ADV. SMT.PREETHY KARUNAKARAN R2-7 BY ADV. SRI.G.SREEKUMAR CHELUR THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19.09.2019, ALONG WITH RFA.411/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Sathish Ninan, J.

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===== Dated this the 19th day of September,
2019

JUDGMENT

These appeals arise from the common judgment in two suits filed seeking partition of the assets of one Kochanthoni. O.S No.878 of 2008 from which R.F.A No.411 of 2012 arises is filed alleging intestate succession and O.S No.403 of 2008 from which R.F.A No.484 of 2012 arises, is between the legatees in Ext A2 Will claimed to have been executed by Kochanthoni.

2. Late Kochanthoni had eight children; two sons

and six daughters. Admittedly, Lilly one among the daughters was of ill health. O.S No.878 of 2008 is filed by three daughters and the legal heirs of a deceased daughter against the other legal heirs of Kochanthoni for partition of the assets, alleging intestate succession.

3. The suit O.S No.878 of 2008 is filed by one of the sons against the legal heirs of his late brother and one of his sisters namely, the aforementioned Lilly as defendants for the relief of partition on the - 2 - strength of Ext A2 Will dated 28.03.1998 claimed to have been executed by late Kochanthoni. Under Ext A2 Will, they alone are the legatees and there is a joint

allotment to the two sons with a life interest reserved over one item in favour of the said Lilly. The other daughters of Kochanthoni and the legal heirs of the deceased daughters got themselves impleaded in the suit as additional defendants. They challenge Ext A2 Will.

4. As per the impugned judgment, the trial court upheld Ext A2 Will and a preliminary decree for partition was passed in O.S No.403 of 2008. The suit O.S No.878 of 2008 was dismissed. These appeals arise therefrom.

5. Heard Sri. M.Sasindran, learned counsel for the appellants and Sri.K.G.Balasubramanian and Sri.G.Sreekumar Chelur on behalf of the respondents.

6. The sole question for determination in the appeal is regarding the genuineness of Ext A2 Will. Kochanthoni died in the year 1994. Ext A2 Will is - 3 - dated 28.03.1988. It is a registered Will. It is not in dispute that both the attestors to Ext A2 Will are

no more. Under such circumstances, the propounder sought to prove the Will in terms of Section 69 of the Indian Evidence Act. The children of the attestors to Ext A2 were examined as PW2 and DW2. They acknowledged the signature of their predecessor, seen in Ext A2. The Sub Registrar of Mala SRO was examined as DW3. Nothing could be brought out to discredit the oral evidence of the witnesses.

7. The challenge against Ext A2 Will was on the ground that late Kochanthoni, at the time of execution of Ext A2, did not have a sound disposing state of

mind and that he was undergoing treatment

Kochanthoni was under treatment in the hospital as stated, definitely records would be available regarding the same. No attempt is made to have the - 4 - same brought before the court. No evidence is made available to cast even a suspicion regarding the mental capacity of the testator. The oral evidence of DW8 suggest that the marriage of one of the daughters of Kochanthoni was conducted by him after the execution of Ext A2 which is a pointer towards his mental and physical capacity at the time of Execution of Ext A2. The recital in Ext A2, reserving a

property therein for the maintenance of Lilly, the physically ill daughter of Kochanthoni and the direction to his sons to maintain her, shows that he was having concern for that daughter and had sound disposing state of mind. To exclude the other daughters from the bequest, Kochanthoni was offered sufficient explanation, that they were sent away marriage in accordance with the prevalent custom and practice of the community by providing sufficient assets.

8. On the whole, the conclusion arrived at by the - 5 -

trial court regarding the proof and genuineness of the Will cannot be said to be flawed in any manner. The finding of the trial court regarding the genuineness of Ext A2 Will is only to be upheld and I do so.

9. While passing the preliminary decree for partition, the property over which life interest was reserved to Lilly above referred, was excluded. Lilly passed away pending the appeal. In terms of Ext.A2 Will, the said property also vests with the two sons.

10. In view thereof, the plaint schedule

properties in O.S No.403 of 2008 are liable to be partitioned into two equal halves by metes and bounds, one share to be allotted to the plaintiff and the other share to the defendants 1 and 2 therein jointly. The decree and judgment of the trial court will stand modified as above. In all other respects the decree and judgment of the trial court will stand confirmed.

- 6 - No costs. Appeals are disposed of as above. Sd/- Sathish Ninan, Judge vdv
Sd/- SATHISH NINAN JUDGE

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