

M.K.Devu Vs. Peroth Girija

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SooperKanoon Citation : sooperkanoon.com/39228

Court : Kerala

Decided On : Feb-02-2015

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appellant : M.K.Devu

Respondent : Peroth Girija

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR MONDAY, THE 2D DAY OF FEBRUARY 2015 13TH MAGHA, 1936 RSA.No. 621 of 2012 () -----
AGAINST THE

JUDGMENT

IN AS2252009 of ADDL. DISTRICT COURT, KOZHIKODE- II, DATED 30.11.2009.
AGAINST THE

JUDGMENT

IN OS6552008 of ADDL.MUNSIFF COURT, KOZHIKODE-I, DATED 26.8.2009.

APPELLANTS/APPELLANTS/DEFENDANTS:- ----- 1.
M.K.DEVU W/O.RARICHUTTI, 68 YEARS, MAPPIAKUNIYIL VEETIL
KACHERITHAZHAM NEDUNGOOTTOOR AMSOM DESOM
P.O.ERANHIPPALAM KOZHIKODU TALUK. (DIED)(**) 2. KOLLANTHODY
RAMADASAN S/O.CHATHU, EDAVAZHIPPURAM VAYAL

PALLATTUTHAZHAMNEDUNGOOTTOOR AMSOM DESOM P.O. CIVIL STATION, KOZHIKODU TALUK (DEAD) 3. M.C.TANKAM W/O.CHOIKUTTI, 64 YEARS NEAR RAJIV GANDHI BYE PASSSREE SUMO AUDITORIUM MALAKKAM AMSOM DESOMKARUVAMPURAM P.O., MANJERI MALAPPURAM.

4. RAMANI W/O.LATE RAMADASAN, AGED50YEARS KOLLANTHUDY (H)NEDUNGOOTTOOR AMSOM DESOM CIVIL STATION, KOZHIKODU.

5. K.RAHULDAS S/O.LATE RAMADASAN, 22 YEARS, KOLLANTHUDY (H) NEDUNGOOTTOOR AMSOM DESOM, CIVIL STATION, KOZHIKODU. (**)
ADDL.6. M.K.BABURAJ, S/O.DEVU, 49 YEARS, MKB INDUSTRIALS, PANDIKKAD ROAD, WANDOOD, MALAPPURAM.

7. SHEELA, D/O.DEVU, 46 YEARS, KURUNGOT (H), THALAKKULATHUR, PAVAYIL CHEEP, CALICUT.

8. VILSANA, D/O.DEVU, 53 YEARS, THALASSERY (H), THAZHATHVELLUR, CIVIL STATION, KOZHIKODE.

9. SARASWATY, D/O.DEVU, 51 YEARS, KOMMADATH (H), MARAD, ARAKKINAR, KOZHIKODE. (.....2) RSA.No. 621 of 2012. -:

2. :- 10. M.K.JAYARAJ, S/O.DEVU, 44 YEARS, AKASH TYRE WORKS, CIVIL STATION, KOZHIKODE.

11. M.K.VINURAJ, S/O.DEVU, 42 YEARS, VANDANA COMPOUND, CIVIL STATION, KOZHIKODE. (ADDL.A6 TO A11 IMPEADED BEING THE LEGAL REPRESENTATIVES OF DECEASED A1 AS PER

ORDER

DATED1911.2012 IN IA.No.2708/12 AND IA NO.2709/12.) BY
ADVS.SRI.V.T.RAGHUNATH SMT.C.V.RAJALAKSHMI

RESPONDENTS/RESPONDENTS/PLAINTIFFS:- ----- 1.
PEROTH GIRIJA D/O.KALLYANI, 62 YEARS, PEROTH HOUSE
PANNIYANKARAAMSOM DESOM, P.O.KALLAI KOZHIKODE TALUK67300.

2. PEROTH RAVINDRAN S/O.KALLYANI, 58 YEARS, PEROTH HOUSE PANNIYANKARAAMSOM DESOM P.O., KALLAI KOZHIKODE TALUK 67300.
3. PEROTH PUSHPA D/O.KALLYANI 57 YEARS, PEROTH HOUSE PANNIYANKARAAMSOM DESOM, P.O.KALLAI KOZHIKODE TALUK - 673003.
4. PEROTH BABURAJ S/O.KALLYANI, 57 YEARS, PEROTH HOUSE PANNIYANKARAAMSOM DESOM, P.O.KALLAI KOZHIKODE TALUK - 673003.
5. PEROTH SALINI D/O.KALLYANI, 52 YEARS, PEROTH HOUSE PANNIYANKARAAMSOM DESOM, P.O.KALLAI KOZHIKODE TALUK - 673003.
6. PEROTH GEETHA D/O.KALLYANI, 50 YEARS, PEROTH HOUSE PANNIYANKARAAMSOM DESOM, P.O.KALLAI KOZHIKODE TALUK - 673 003.
7. VILASINI W/O.PEROTH VISWANATHAN, 56 YEARS PANNIYANKARAAMSOM DESOM, P.O.KALLAI KOZHIKODE TALUK - 673 003.
8. RIJESH S/O.PEROTH VISWANATHAN, 33 YEARS PANNIYANKARAAMSOM DESOM, P.O.KALLAI KOZHIKODE TALUK - 673003. (.....3) RSA.No. 621 of 2012. -:

3. :- 9. RIMESH S/O.PEROTH VISWANATHAN, 31 YEARS PANNIYANKARAAMSOM DESOM P.O. KALLAI KOZHIKODE TALUK - 673003.

10. RINEESH S/O.PEROTH VISWANATHAN, 28 YEARS PANNIYANKARAAMSOM DESOM P.O. KALLAI KOZHIKODE TALUK - 673003. BY ADV. SRI.V.V.SURENDRAN BY ADV. SRI.P.A.HARISH THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kvs/- P.B.SURESH KUMAR, J.

===== R.S.A.No.621 of 2012. ===== Dated this the 2nd day of February, 2015.

JUDGMENT

The defendants in O.S.No.655 of 2008 on the file of the Court of the Additional Munsiff-I, Kozhikode have come up in this appeal challenging the concurrent decisions of the courts below.

2. O.S.No.655 of 2008 is a suit for partition. The respondents are the plaintiffs. The case set up in the plaint is that the suit property belonged to one Ammu and on her death, the same devolved on the plaintiffs and the defendants being her successors in interest. According to the plaintiffs, they are the legal representatives of Kalyani who is one of the daughters of Ammu. The defendants are the remaining children of Ammu and their successors.

3. The contention raised by the defendants in the suit was that Kalyani is not the daughter of Ammu.

4. The trial court, on an evaluation of materials R.S.A.No.621/2012. 2 on record, came to the conclusion that Kalyani is the daughter of Ammu and accordingly decreed the suit and the said decision has been affirmed by the appellate court.

5. Heard the learned counsel for the appellants as also the learned counsel for the respondents.

6. It is the admitted case of the parties that the defendants are the children of Ammu born out of her wedlock with Chathukutty. The case of the plaintiffs is that Ammu had married one Arumughan prior to her marriage with Chathukutty and Kalyani is the daughter born to her in that wedlock. It is also their case that Ammu had married Chathukutty who is none other than the brother of Arumughan on his death. PW3 examined on the side of the plaintiffs deposed that she is the sister of both Arumughan and Chathukutty and that Ammu had first married Arumughan and it is on the death of Arumughan, she married Chathukutty. PW3 has also stated that Kalyani is the daughter of Ammu in her wedlock with Arumughan. The evidence tendered by PW3 that she is the sister of both R.S.A.No.621/2012. 3 Arumughan and Chathukutty has not been challenged by the defendants in the cross examination. The evidence tendered by PW3 that Arumughan had married Ammu prior to her marriage with Chathukutty is also not seen challenged by the defendants in the cross examination. The challenge on the other hand was only

that Kalyani was not the daughter of Ammu. Ext.A3 is a certificate issued by DW2, the Village Officer, Vengeri. It gives the particulars of the legal representatives of Ammu. In Ext.A3, it is stated that the plaintiffs are the children of the deceased daughter of Ammu named Kalyani. The particulars of the defendants are also shown in Ext.A3 as the children of Ammu. Ext.A15 is a document executed by Kalyani in favour of a third party. In Ext.A15 it is recited that Kalyani is the daughter of Arumughan. The defendants have no case that Kalyani who had executed Ext.A15 is not the mother of the plaintiffs. PW1 has given evidence on behalf of the plaintiffs. He has categorically stated that the plaintiffs are the children of Kalyani who is the daughter born to Ammu R.S.A.No.621/2012. 4 in her wedlock with Arumughan. Even though it is suggested to him by the defendants that Kalyani is not the daughter of Ammu, there was no suggestion to PW1 as to the parents of Kalyani. It is on the basis of the aforesaid materials, the courts below came to the conclusion that Kalyani is the daughter of Ammu.

7. The learned counsel for the appellants contended that it is solely based on Ext.A3 that the courts below came to the conclusion that Kalyani is the daughter of Ammu on the basis that there is a presumption as to the correctness of the contents of Ext.A3. According to him, the presumption as far as the said document is concerned is only that the same has been issued in the regular course of official business. According to him, there is no presumption as to the correctness of the contents of the document. As indicated above, the factual finding arrived at by the courts below that Kalyani is the daughter of Ammu is not solely based on Ext.A3. On the other hand, the said finding has been arrived at based on other materials available on R.S.A.No.621/2012. 5 record also, applying the principle of preponderance of probabilities. The contention raised by the learned counsel for the appellants, in the circumstances, does not arise for consideration.

8. There is, therefore, no question of law, much less any substantial question of law involved in this appeal. This Second Appeal is accordingly dismissed in limine. Sd/- P.B.SURESH KUMAR, (Judge) Kvs/- // true copy // PA TO JUDGE.