

Kunhammad Kutti Vs. Cheria Mammad and ors.

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Court : Chennai

Decided On : Feb-07-1924

Reported in : AIR1924Mad787

Appellant : Kunhammad Kutti

Respondent : Cheria Mammad and ors.

Judgement :

Wallace, J.

1. The decision in this appeal turns on the interpretation to be put upon Ex. B, a gift deed executed by one Parapravan Bavothi Haji in favour of his daughter The donor was a Muhammadan of North Malabar admittedly following the Marumakkathayom law prevalent in these parts and he was the sole survivor and senior member of his tarwad.

2. Ex. B recites that he gifts the property 'to you '(in the singula)' 'and then goes on to say that in future except for you and your offspring (Santanam) there is no claim' concern or right of entry for me over this paramba...you and your Santanams should hold the said paramba in possession and enjoy the same as your jenmom.' Both the Lower Courts have held that the form and the circumstances of the gift necessarily lead to the inference that the gift was not for the donee's exclusive benefit but for the children also and that the property gifted it therefore putravakasam property belonging to the donee's tavazhi.

3. The 1st defendant in this appeal challenges that finding. The point for determination is whether this was a gift to the daughter exclusively or a gift to her as the head of a tavazhi formed of herself and her children.

4. Various reported and unreported cases bearing on this question of Marumakkathayom law have been cited to me, relating to gift deeds or bequests more or less analogous to one in suit. The general test is, having regard to the presumed knowledge of local customs by donor or testator and the manner of holding property in the community of the donor or testator and having regard to the terms in which they have expressed their intention in their deed of gift or bequests, what was their real intention. Generally it has been held that, unless there are apt words to indicate that the intention was that the property should be held in any manner different from the usual manner in which such property is held apt words to imply that the property is to be held with powers larger than usual then it must be taken that the intention was that the property should be held in the usual manner.

5. Thus in cases where the gift or bequest has been to a woman and her children and there is no further expression of intention as to how it should be held, no apt words to express the gift of an absolute alienable estate, it has been held that they took it and hold it as a woman and her children usually would hold under the Marumakkathayom law, that is, as a legal corporate unit or tarwad: see *Kunhacha Umma v. Kutti Mammi Hajee* [1892] 16 Mad. 201, *Koroth Amman Kutti v. Perungottil Appu Nambiar* [1906] 29 Mad. 322 and *Naku Amma v. Raghava Menon* [1912] 38 Mad. 79. Where, a gift or bequest is to a woman and her children which words might be taken to impose an intention to confer an absolute estate, it has been held that since the usual manner of holding property by her children under Marumakkathayom law is in the form of a tavashi, it must be taken that the donees held the property in that way. See *Chakkra Kannan v. Kunhi Pokker* [1915] 39 Mad. 317. It may be noted that the bequest in *Chakkra Kannan v. Kunla Pokker* [1915] 39 Mad. 317 was a bequest to children only.

6. In *Pattatheruvath Pathumma v. Mannam Kunnigil Abdulla Haji* [1907] 31 Mad. 228 the suit property, as I have verified with reference to the original records, had been purchased by a Muhamamadan husband in the name of his wife only. The

husband had previously given a house to his wife and children, which however was not part of the property in suit and the question was to whom the property in the suit descended on the wife's death. The High Court held in that case that the intention was that the purchase in the name of the wife was intended for the children also and followed the case in *Koroth Amman Kutti v. Perungottil Appu Nambiar* [1906] 29 Mad. 322; that is, they took it with the incidents of tarwad property. There was no question there of apt words in any deed of gift or bequest. The case in *Kalliani Amma v. Govinda Menon* [1911] 35 Mad. 648 as I have also verified from the records was a case of a gift to a woman only with a recital that 'besides the jewels and vessels which I acquired out of my own funds and which I have given to you and your santanam for enjoyment permanently and for ever, I have now given properties' of which particulars are given; and the document goes on to say, 'I have resolved that you and your santanams should be in enjoyment for ever along with me as long as I live and in proprium thereafter, and that to it my heirs shall have no right.' It was there held that that was really a gift to the woman and her children and *Kunhacha Umma v. Kutti Mammi Haji* [1892] 16 Mad. 201 was followed.

7. Besides, the authorised reported cases, I have *Kuyyathil Kantan Kutty v. Vyalpath Parkum* 32 Ind.Cas. 107 and *Paru Amma v. Itticheri Amma* 32 Ind.Cas. 459. The former was a case of gift by a Marumakkathayom donor to his nieces with no apt words to express an absolute estate and the case of *Kunhacha Umma v. Kutti Mammi Haji* [1892] 16 Mad. 201 was followed by *Kumaraswamy Sastry, J.*, whose judgment was upheld in Letters Patent Appeal No. 19 of 1916. The other case was one of a bequest in which the words 'with absolute rights of alienation' were used and it was there held that the legatee took an absolute estate.

8. On consideration of these cases I am of opinion that the present document of gift bears most resemblance to that in *Kalyani Ammal v. Govinda Menon* [1911] 35 Mad. 648. There are here no apt words conferring absolute rights of alienation. The gift is to the woman only, but the enjoyment is to be by her and her santhanams and I do not think any distinction can be drawn, between the present document and that in *Kalyani Amma v. Govinda Menon* [1911] 35 Mad. 648 merely on the ground that the donor in the latter case had already given other

properties to his wife and fantanams. There is nothing in the suit document to take it out of the ordinary category of gift to a woman under Marumakkathayom law of property to be enjoyed by her and her santanams, that is to say, to be enjoyed with all the incidents of tarwad property.

9. I therefore agree with the Lower Courts that this property is putravakasam. I am not prepared to interfere and I dismiss the appeal with costs of the 1st respondent.

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