

(1972) 07 KL CK 0009
In the High Court Of Kerala
Case No : Second Appeal No. 202 of 1969

Cheria Kannan

APPELLANT

Vs

Karumbi and Others

RESPONDENT

Date of Decision : 07-07-1972

Acts Referred:

Citation : AIR 1973 Ker 64

Hon'ble Judges : N.D.P. Namboodiripad, J

Bench : Single Bench

Advocate : O. Balanarayan, for the Appellant; T.M. Krishnan Nambiar, for Defendant No. 1, for the Respondent

Final Decision : Allowed

Judgement

N.D.P. Namboodiripad, J.—This appeal is concerned with the construction of a deed of gift One Valiya Kannan settled under Ext. A-I gift deed dated 26-3-1946 the kanom-kuzhi-kanam rights he held over the suit property in favour of wife Matha and his nephew the defendant to this action. Matha died issue-less sometime before the commencement of the Hindu Succession Act. According to the plaintiffs, on Matha's death, her share in the disputed item devolved on a tavazhi of which the plaintiffs are the surviving members. The plaintiffs therefore sued for partition and recovery of one-half share in the property. The defendant claimed exclusive title over the property on the basis of Ext. B-2 Will alleged to have been executed by Matha as also certain provisions in Ext. A-I to which both sides are tracing their title. The trial court found that Ext. B-2 was not genuine and gave a decree to the plaintiffs. An appeal by the defendant did not succeed; and hence this second appeal.

2. In view of the concurrent finding of the courts below that Ext. B-2 is not genuine the only question that falls for decision is whether the appellant-defendant can claim exclusive right over the property in view of the provisions contained in Ext. A-I. The deed in question is a short document. It is executed in favour of Matha and the defendant. The donor relinquished all his rights over the

property and give it as a gift to the donees. Immediately after the clause relating to the conveyance proper, the deed provides that the property should be owned and enjoyed by the two donees as joint owners. It is also stipulated in the deed that the property could not be encumbered without the junction of both the donees and that any liability incurred by one of them shall not affect the property. The last clause is to the effect that since the 2nd donee (the donor's wife Matha) had no children, on her death her rights in the property would devolve on the first donee (the defendant). It is not disputed that in cases of this kind the paramount duty of the court is to give effect to the intention of the donor within the limits specified by law. If it is a question of searching the intention of the donor in this case, I feel that the intention is clearly and unambiguously declared in the last clause of the deed whereby Valiya Kannan directed that on the death of his wife the entire property should go to his nephew, the defendant here. The only question is whether there is any impediment in law in giving effect to this unequivocal declaration of intention by Kannan. The courts below proceeded on the basis that the clauses in the deed relating to (he creation of charges and devolution on Martha's death are void for repugnancy, being inconsistent with the absoluteness of the transfer evidenced by other operative clauses of the deed. Repugnancy is not something which can be or should be readily inferred in construing a deed. As has been held by the Supreme Court in Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, "if (here be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereat"."

A careful analysis of the various provisions of this document would show that there is no inconsistency between any two provisions of the document. The effective provision relating to the conveyance shows that the transfer was made in favour of (he two donees together. T(is not possible to spell out from any provision in the deed any intention on the part of the donor to create any separate interest in favour of each one of the two donees. The insistence on the junction of both the donees in the matter of encumbering the property is an inevi(able sequence to the nature of the right (hat was created by the earlier provision of the deed. The document consequently creates a joint right in favour of the two donees and, therefore, a direction that on the death of one of the donees his rights must devolve upon the other is absolutely valid and is only consistent with the intention of (he donor. I find ample support "for this view in the decision reported in Mahomed Jusab Abdulla Vs. Fatmabai Jusab Abdulla, Though the personal law of the parties therein was Mohammadan law, I do not find any difficulty in applying the principles laid down therein to this case also. In so far as the provision regarding the devolution of the property on Matha's death is not violative of any rule of law and is absolutely consistent with the intention of the donor as revealed by the preceding provi sions of the deed, it has to be held that on the death of Matha the defendant became the absolute owner of the

property. The decision of the court below is, therefore, incorrect and has to be set aside.

In the result, the decision of the courts below is hereby set aside; and the suit is dismissed. The appeal is allowed. In the circumstances of the case I make no order as to costs.