

(2024) 01 KL CK 0102

In the High Court Of Kerala

Case No : Regular First Appeal No. 588 Of 2011 & C.O.No.20 of 2012

Gourikumar

APPELLANT

Vs

Ramanunni

RESPONDENT

Date of Decision : 12-01-2024

Acts Referred:

Indian Succession Act, 1925 — Section 25

Citation : (2024) 01 KL CK 0102

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : V.K.Balachandran, Santheep Ankarath, Sumodh Madhavan Nair

Final Decision : Dismissed

Judgement

Sathish Ninan, J.

1. The preliminary decree for partition, insofar as it negated the claims of the plaintiffs, is under challenge by them.
2. The plaintiffs and the 1st defendant are the children of one Kumaran Nair. He died on 26.07.2007. His wife pre-deceased him. The plaint 'B' schedule consists of four items of immovable properties. The plaint 'C' schedule is gold ornaments. The plaint 'D' schedule is described as medals, mementos, gold coins, etc. Plaint 'E' schedule is fixed deposits. The plaint 'F' schedule is an autorickshaw.
3. According to the plaintiffs, plaint 'B' to 'F' schedule items belonged to their father-Kumaran Nair. On his death, the properties devolved on the plaintiffs and the 1st defendant. Accordingly, the claim is for partition of their 7/8 shares.
4. The 1st defendant challenged the claim for partition. It was contended that the father-Kumaran Nair, had executed Ext.B1 Will No.42 dated 06.04.2005 of Cherpulassery SRO. As per Ext.B1, the plaint B schedule items 1 to 3 are bequeathed to the plaintiffs and plaint B schedule item No.4 to the 1st defendant. It was contended that the plaint C to E schedule properties are not

available. As regards plaint F schedule property, it was contended that the vehicle belongs to the 1st defendant.

5. The trial court upheld Ext.B1 Will. The plaint C schedule property was held to be partible. The claim for partition of the plaint D schedule was negatived, holding that they are not available. As regards plaint E schedule fixed deposits, it was held that, out of the two fixed deposits in the name of Kumaran Nair, one was encashed by him even during his life time and the other deposit was encashed by the 1st defendant after the death of Kumaran Nair, as the nominee. The said deposit was held to be partible. The claim for partition of the plaint F schedule was negatived, finding that the 1st defendant is the registered owner of the vehicle.

6. The plaintiffs have filed the appeal essentially challenging the judgment of the trial court insofar as it upheld Ext.B1 Will. The Will relates only to the plaint B schedule immovable properties. The 1st defendant has filed a cross objection challenging the decree for partition in respect of the plaint 'C' schedule gold ornaments.

7. I have heard the learned counsel on either side.

8. The points that arise for determination are;

i) Is the finding of the trial court upholding Ext.B1 Will sustainable on the evidence?

ii) Is the finding of the trial court regarding the partibility of plaint C schedule gold ornaments supported by materials?

9. Ext.B1 will is challenged by the plaintiffs-appellants on the ground that the evidence on record does not prove due execution and attestation of the will as mandated under Section 63 of the Indian Succession Act, 1925. It is also contended that the testator, Kumaran Nair, was aged 91 years when the Will was executed and he was mentally and physically weak. It was also contended that Ext.B1 will is, on the face of it, inequitable and suspicious.

10. The attestors to the Will were examined as DWs.3 and 4. Their credibility is challenged by the learned counsel for the appellants. Admittedly they are strangers, and seem to be attached to the office of the document writer to stand as witnesses when asked for. Shri.Kumaran Nair was a renowned personality. He had received Padmasree Award from the Indian President. There was no reason why he would have sought the help of two strangers like DWs.3 and 4 as witnesses for the execution of the will, it is argued. It is also contended that the evidence of DWs.2 to 4 would reveal that the witnesses have not seen the testator signing the Will. Thus there is non-compliance with Section 63 of the Indian Succession Act, it is argued.

11. DW.3 has, in chief examination, deposed about the due execution and attestation of Ext.B1 Will in tune with the requirements under Section 63 of the

the plaintiffs allege that Shri.Kumaran Nair was mentally and physically weak, it has come out in evidence, even as admitted by PW1 that, in May, 2005, there were celebrations of 'Navathi' of Kumaran Nair, that he received 'Padmasree Award' in the year 2004 and that he had travelled to Delhi to receive the same. PW1 had also stated that there were several meetings held to felicitate Kumaran Nair. The marriage of the daughter of the 7th plaintiff was held in May, 2005. PW1 admits that Kumaran Nair had attended the marriage. PW1 also admits that Kumaran Nair had appeared in the TV channel for an interview in connection with the Award of Padmasree on him. All these show that during the period of execution of the Will, Shri.Kumaran Nair was healthy and in sound disposing state of mind.

16. As regards the contention that the Will discloses an unfair disposition, the Will contains 4 items of properties. Items 1 to 3 are wet lands, and item 4 alone is the garden land. Item 4 was given to the 1st defendant and the other properties were given to the plaintiffs. It has come out in the evidence of PW1 himself that all the children of Kumaran Nair, except the 1st defendant, are employed, well off and are residing in their own houses. PW1 admitted that the 1st defendant is a person who failed in the 10th standard and is unemployed. This could have weighed with Kumaran Nair to bequeath the property with the residential building to the 1st defendant. It is to be noticed that, the plaint B schedule items 1 to 3, though not as valuable as item in plaint B schedule item No.4, were given to the other children, who are well settled in life. Incidentally it is relevant to note that, PW1 admitted that in the wedding invitation card of PW1's son, they did not include the name of Shri.Kumaran Nair. It would only indicate the degree of attachment between PW1 and Kumaran Nair. It is the case of the 1st defendant that he was looking after the father. Possibly, it also must have prompted Kumaran Nair further, to have made disposition in the manner as in Ext.B1 Will. Therefore the said contention also fails.

17. Before concluding the discussion on Ext.B1, it is also to be noted that, PW1 admitted that the signature in Ext.B1 will is that of Kumaran Nair.

18. The trial court has duly taken note of the above facts and evidence and upheld Ext.B1 Will. The finding on Ext.B1 Will is not liable to be interfered with.

19. With regard to the plaint 'C' schedule, the decree granted by the court reads thus;

"The 1st defendant is directed to produce the movables described in the C schedule or the value thereof before the court forthwith."

The Court held that there is admission by the 1st defendant regarding availability of the plaint C schedule and has accordingly passed the decree. The admission is stated to be at paragraph 5 of the written statement. However, on a reading of the said paragraph, it could not be held that the 1st defendant has admitted the existence or availability of C schedule. It reads thus, "??? ?? C ????? 1 ? ?? 9 ? #? ??? ? ? ? ?? ??? ?? ? ? ?? ? ?'?? ?? ??? ? ?? ?? ? . ??? ? ?? ? , ?

#?? ? ?? ? ?/ ??#? ? ??? ? ?? ??? ?1?? ? ? ????? ? ? ? ? C ????? ????? ? ? ? .”
The statements as above could not be understood as an admission of existence and availability of the plaint C schedule. The later part can only be understood to be an alternate plea. As DW1, there has been a categorical denial of the availability of the plaint C schedule. There is no evidence to find the existence and availability of the same.

20. That Sri.Kumaran Nair was not in a sound financial position has been brought out in evidence and even through the cross examination of PW1. He has deposed that the bank balance of Shri.Kumaran Nair at the time of his death was only Rs.75,000/-. PW1 has also admitted in cross examination that Kumaran Nair had not obtained any family properties, and that the daughters were given in marriage with the income received from his avocation. No evidence is adduced by the plaintiffs to prove the availability of the plaint C schedule property. In the absence of materials, the court could not have granted a decree for the plaint C schedule. The decree has granted solely on the so called admission of the 1st defendant. Therefore, the decree granted by the trial court insofar as it relates to plaint C schedule property is liable to be interfered with.

Resultantly, the appeal is dismissed and the cross objection is allowed. The decree and judgment of the trial court, insofar as it relates to the plaint C schedule is set aside. The claim in respect of the plaint C schedule property will stand dismissed. The decree and judgment of the trial court in respect of all other items will stand affirmed. Parties to bear their respective costs.