

(1950) 10 KL CK 0004
In the High Court Of Kerala
Case No : Appeal Suit No. 704 of 1122

Ithappiri Mathai and Another

APPELLANT

Vs

Sree Devi Antharjanam and Others

RESPONDENT

Date of Decision : 03-10-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 21 Rule 20, Order 21 Rule 22

Citation : AIR 1950 Ker 225

Hon'ble Judges : Gangadhara Menon, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : K.T. Thomas, for the Appellant; T.N. Subramania Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Gangadhara Menon, J.—This is an appeal against the judgment & decree of the Disk Munsiff of Muvattupuzha in O. S. 100 of 1118.

2. The pltfs. two female members of a Namboodiri illom have brought the suit to set aside the decree & execution proceedings in O.S. 265 of 1103 of the Muvattupuzha Munsiff's Ct. & to recover possession of the properties sold & delivered over to deft. 1 in execution of the decree with past & future mesne profits. The pltfs. alleged that the debt-bond which was the basis of the suit in O. S. 265 of 1103 is not supported by consideration & illom necessity, that the decree was not validly obtained against the illom & that the execution proceedings are fraudulent & invalid. The deft. 1 denied the allegations in the plaint & contended that the decree & execution proceedings are binding on the illom. The trial Ct. held that the debt-bond was supported by consideration & necessity; but it found that the decree in O.S. 265 of 1103 was not validly obtained against the illom and that it is enforceable only against defts. 2 & 3 in that suit & the assets of the deceased Nilacantan Namboodiri. It was held that the proceedings in execution are also invalid. Therefore the learned Munsiff set

aside the decree & execution proceedings as against the illom & allowed the pltfs. to recover possession of the properties on behalf of the illom with past & future mesne profits. The legal representatives of deft, 1 have preferred this appeal against the above decree. The pltfs have filed a memorandum of objections to the findings recorded against them.

3. The learned Advocate for the resps. does not seriously object & we think rightly to the findings of the learned Munaiff that the bond which formed the basis of the decree O. S. 265 of 1103 is supported by consideration & necessity. That finding is, therefore, confirmed.

4. The next question is as to whether Ex. 1 decree & execution proceedings in O. S. 265 of 1103 are valid & binding on the illom. The learned Munsiff thinks that Ex. 1 decree was not validly obtained against the illom for two reasons, viz. (1) that the decree is not obtained against the karnavan of the illom as such & (2) that Raman Aryan Namboodiri who was the karnavan of the illom on the date of the suit died during the pendency of the suit & nobody was brought on record as his legal representative.

5. It is contended that in Ex X plaint in O.S. 265 of 1103 Raman Aryan Namboodiri was described as engaged in (SIC) "Grihabharanam" which meant that he was in management of the illom & that even if this description be deemed to be not sufficient to indicate that the karnavan was sued as such the allegations in the plaint clearly indicated that the karnvan was sued in his representative capacity & that the pltfs. were seeking to get a decree against the assets of the illom. Therefore it is argued that in any event there was substantial compliance with the provisions of law. Assuming that this position taken up by the applts. is correct, still as pointed out by the learned Munsiff Raman Aryan Namboodiri who was admittedly the karnavan of the illom died during the pendency of the suit & nobody appears to have been brought on record as his legal representative. Ex. K. death register shows that Raman Aryan Namboodiri died on 11-6-1103. The decree in the case was pished on 23-8-1103 long after the death of deft. 1. Even taking it that deft. 1 was impleaded in the suit as karnavan of the illom nobody was brought on record as karnavan after his death. We think that this defect is fatal to the validity of the decree against the illom. It is argued that the next senior in age who under law became the karnavan after the death of deft. 1 was already on the party array though not as such, that the defect if at all in not bringing him on record as the karnavan was only an irregularity & not an illegality which would vitiate the binding character of the decree against the illom. We are unable to agree with this contention. As long as the karnavan of the illom was not brought on record as such after the death of deft. 1 in the eye of the law there was no representation of the illom in the suit & so the decree obtained cannot be valid & binding on the illom. We are, therefore, of the view that Ex. I decree is not valid & binding on the illom of the pltfs. The attachment & sale of the illom properties on the basis of the decree which is not binding on the illom are, therefore, invalid. It is also Been that notice under

Order XXI, Rule 20, CPC (CPC) was not issued to deft. 12 in the case. The Ct. obtains jurisdiction to execute the decree only after the issue of the notice as enjoined under Order XXI, Rule 20, CPC (CPC), The sale in execution is void, for this reason also. But the execution proceedings are liable to be set aside on the sole ground that the decree is not validly obtained against the illom and that consequently the attachment & sale of illom properties were illegal. The decree of the Court below is, therefore correct & does not call for any interference.

6. No other point was urged in appeal.

7. In confirmation of the decree of the trial Ct. we dismiss this appeal with costs. The memorandum of objections is also dismissed with coats.