

(1959) 03 KL CK 0025
In the High Court Of Kerala
Case No : S.A. No. 121 of 1956 (E)

Kali and Others

APPELLANT

Vs

Narayana Pillai and Others

RESPONDENT

Date of Decision : 09-03-1959

Acts Referred:

Citation : (1959) KLJ 681

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : K.P. Abraham, for the Appellant; M. Krishnan Nair, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—The suit, out of which this Second Appeal arises was chiefly to set aside a gift deed, Ext. II or Ext. A dated the 16th Kanni, 1119 executed by Appavu who was the father of the 1st plaintiff and the husband of the 2nd defendant, in favour of the 1st defendant, for the suit properties. Appavu obtained an interest in them, under an udampadi, Ext. C, dated the 16th Karkadagom 1081, executed by his father Krishna Pillai. Appavu and his brother Manickom Pillai were Krishna Pillai's sons by his first wife, the 1st defendant, being his son by his second wife. They are Vellalas, governed by the Hindu Mithakshara Law. By Ext. C, Krishna Pillai allotted some of his properties including those comprised in the suit, under schedule A therein, to Appavu and Manickom Pillai, and the remainder of his properties, under Schedule B therein to his second wife and sons by her, including the 1st defendant. It was common ground, that the properties so dealt with by him in Ext. C, belonged to Krishna Pillai absolutely. Manickom Pillai left the place shortly after and had not been heard of, for more than fifteen years. It may be taken for the purpose of this appeal, that he was not alive, when Ext. II was executed. The plaintiffs impeached Ext, II, and certain documents executed by the 1st defendant on the strength of it, chiefly on the ground, that the properties obtained by Appavu and Manickom Pillai under Ext. C were ancestral in their hands, and that therefore

Appavu was incompetent to execute Ext. II. On the other hand, the 3rd defendant one of the alienees, whose legal representatives have preferred this appeal, supported the alienations on the ground, that Appavu became absolutely entitled to the properties, by reason of Ext. C, and that therefore the plaintiffs are incompetent to impeach them. The question for decision and the only one argued was, whether Appavu took the properties so allotted to him, absolutely or as ancestral properties. Prior to the decision of the Supreme Court in C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another, , there had been a divergence of judicial opinion in the different High Courts in India, on the question as to what kind of interest, a son would take, in the self-acquired property of his father, which he receives by way of gift or bequest from him. In that case, the point considered was, whether the properties obtained by the son, under a will left by his father were to be regarded as ancestral or self-acquired in his hands. The properties of the father, may be inherited by the son, or may be received by him on a partition made during the life-time of the father. In either case, the properties are received by the son, by virtue of his legal right, as the son, and consequently are ancestral in his hands, but in the case of a gift by the father to the son, a distinction exists, which was stated by the Supreme Court, in these terms. The son "receives it, not because he is a son, or has any legal right to such properties, but because, his father chose to bestow a favour on him, which he could have bestowed on any other person, as well. The interest which he takes in such property, must depend upon the will of the grantor. A good deal of confusion, we think, has arisen by not keeping this distinction in mind. To find out whether a property is or is not ancestral in the hands of a particular person, not merely the relationship between the original and the present holders, but the mode of transaction also must be looked to; and the property can ordinarily be reckoned as ancestral, only if the present holder has got it, by virtue of being a son, or a descendant of the original owner". The material question to decide, to quote again from the same judgment of the Supreme Court, is "whether the donor intended to confer a bounty upon his son exclusively for his benefit, and capable of being dealt with by him at his pleasure or the apparent gift, was an integral part of a scheme for partition, and what was given to the son, was really the share of the property which would normally be allotted to him, and in his branch of the family on partition." It was also ruled, that in law, there could be no presumption in a given case; that the father intended to make a gift, or a partition of his properties; this must be decided having regard to the terms of the document, and to the attendant circumstances. I take it, that this settles the law on the point, and it is only necessary to apply the test to the terms of Ext. C, and to the facts of the case. It may be mentioned that this test was applied by a division bench of this Court, in Penukka and Others Vs. Kelukkutty and Others, .

2. Applying the above test, I feel no difficulty whatever in coming to the conclusion, that Ext. C was a partition of his properties, made by Krishna Pillai, between his sons by his two wives, and was not a gift to Appavu and his brother on the one hand, and to his sons by the second wife, individually. As its

nomenclature shows, Ext. C is an "udampadi" akin to a partition or settlement, and is not a gift. Though the word "thavazhi" employed in it to indicate the group to which the properties were allotted, has no appropriateness, with respect to a Hindu family it serves to indicate, that the idea at the back of the mind of Krishna Pillai was, to benefit the two groups which were constituted as to joint families and not the individuals in each. This was accomplished by Ext. C, by effecting a separation between the two groups, and by vesting properties in them, to be held by them as two joint Hindu families. The reason which impelled Krishna Pillai to make this settlement was stated in Ext. C to be, that he had contracted certain debts, and that he considered it desirable, to make a settlement of his assets and liabilities before he died. Accordingly these were divided in two schedules A and B, those in the former being allotted to Appavu and to Manickom Pillai, who were described in Ext. C as parties Nos. 1 and 2, being the members of a "thavazhi", those in the latter being allotted to his second wife and sons by her, as members of the other "thavazhi". The inference is irresistible, that Ext. C was a partition made by Krishna Pillai of his assets and liabilities between the two groups of heirs, and not a gift. I am not able to discover any intention on the part of Krishna Pillai, to confer a bounty on Appavu or any of his sons, individually. The language employed in Ext. II, is not conclusive, though in one part of it, Appavu had characterised the allotment under Ext. C, as having been made to his "thavazhi", in a later part of it, he also declared, what may be regarded as a self-serving statement at the time, which does not bind the plaintiffs, that he was the last surviving member of that "thavazhi". I therefore agree with the learned Additional District Judge in holding, that the suit properties were ancestral properties in the hands of Appavu. If so, it must follow, that Appavu was incompetent to execute Ext. II. The decree under appeal will therefore stand, this appeal is dismissed with costs.