

(1994) 04 KL CK 0022
In the High Court Of Kerala
Case No : S.A. No. 151 of 1988

Kesavan Anandakumar

APPELLANT

Vs

Nangali amma Kochikka and Others

RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:

Citation : (1994) 04 KL CK 0022

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.R. Rajendran Nair, Mary Isabella, S.D., P.V. Asha and Ajayagosh, for the Appellant; S. Ananthasubramanian, for the Respondent

Judgement

M.M. Pareed Pillay, J.—Plaintiff is the Appellant. He filed the suit for partition on the strength of Ext. A-1 Will executed by his mother (first Defendant) and father. The property belonged to Plaintiff's parents who obtained it as per Ext. B-1 partition deed. Plaintiff's case is that he is entitled to half right in plaint schedule property as the beneficiary of Ext. A-1 Will after the death of his father. Munsiff dismissed the suit holding that Plaintiff can get right in the property only after the death of his mother and the suit is premature. The District Judge held that Plaintiff is not entitled to any right in the property in view of the fact that his mother had revoked Ext. A-1 Will and executed Ext. B-2 settlement deed.

2. Plaintiff and Defendants 2 and 3 are the children of the first Defendant and Kesavan. First Defendant and Kesavan obtained right in the property as per Ext. B-1 partition deed in 1966. On 29th September 1978 first Defendant and Kesavan executed Ext. A-1 Will bequeathing the property in favour of the Plaintiff. Kesavan died on 9th November 1980. On 9th March, 1981 first Defendant executed Ext. B-2 settlement deed assigning the plaint schedule property to Defendants 2 and 3.

3. Plaintiff filed the suit for declaration of his title, partition and for recovery of possession of one half right in the plaint schedule property. His contention is that

his father and mother executed a joint Will (Ext. B-1) and after the death of his father property rights devolved on him as per the terms of the Will and that his mother was not competent to execute Ext. B-2 settlement deed depriving him of his right in the property. Defendants contended that after the death of Kesavan the property became vested with the first Defendant absolutely and she was perfectly competent to execute Ext. B-2 settlement deed and Plaintiff has no manner of right to challenge the same.

4. In Halsbury's Laws of England, Halisham's Edition, Volume 34, Page 17, Para 12 joint Will is explained thus:

A joint Will is a Will made by two or more testators contained in a single document, duly executed by each of testator, disposing either of their separate properties, or of their joint property. It is not, however, recognised in English law as a single Will. It operates on the death of each testator as his Will disposing of his own separate property and is in effect two or more Wills.

Jarman on Wills, 8th edition, page 41 makes references to the following observations of Farewell, J. in L.R. (1932) 1 Ch. 585 at 592:

...In my judgment it is plain on the authorities that there may be a joint Will in the sense that if two people make a bargain to make a joint Will, effect may be given to that document. On the death of the first of those two persons the Will is admitted to probate as a disposition of the property that he possesses. On the death of the second person, assuming that no fresh Will has been made, the Will is admitted to probate as the disposition of the second person's property.

5. The validity of the joint Will is recognised in India. Following *Minakshi Ammal v. Viswanatha Iyer* 33 Mad 406 Bombay High Court in *Jethabhai Gokuldas Patel Vs. Parshottam Havsa Kumbhar*, held that a joint Will can validly be made by two persons. In *Govindan Kaimal v. Lakshmi Amma* 1959 KLT 9 (S.C.) the Supreme Court held that a joint Will made by two or more testators contained in a single document duly executed by each testator, disposing either of their separate properties or of their joint property cannot be recognised as a single Will and it operates on the death of each testator as his Will disposing of his own separate property and is in effect two or more Wills.

6. Ext. A-1 is a joint Will as it has been executed by Plaintiff's mother and father with respect to their property. It takes effect as if each has properly executed a Will as regards his own property. In Ext. A-1 Will it is stated that Plaintiff's father and mother obtained the property as per partition deed of 1966 and that after their death it would devolve on the Plaintiff. There is also recital to the effect that the testators have the right to modify the Will or cancel the same. But it does not authorise the surviving testator to modify or cancel the Will after the death of one of them regarding the bequest of the deceased testator. Plaintiff's mother could not have revoked the bequest made by the father unilaterally. From a reading of the Will what can be discerned is that the parents of the Plaintiff wanted to make bequest of the property to the Plaintiff. As father died, Plaintiff is

entitled to the bequest his father had made so far as his property is concerned. As Ext. A-1 Will does not show that first Defendant was given any right to deal with her husband's property after his death, she could not have executed Ext. B-2 which in effect revoked Ext. A-1 Will so far as the bequest made by Plaintiff's father is concerned.

7. Though the property was jointly allotted to Plaintiff's father and mother in the partition, the latter did not have any legal right to deal with the former's property. On the death of one of the testators the surviving testator cannot have any right to interfere with the bequest made by the deceased testator. Thus on the death of Plaintiff's father, his mother could not have meddled with the bequest concerning his father's property. From the recitals in Ext. A-1 it can be seen that this is a joint Will executed by Plaintiff's mother and father. As the testators have not conferred upon each other reciprocal benefits, Ext. A-1 cannot be termed as a mutual Will. The Courts below held that Ext. A-1 is a joint Will.

8. In the case of a joint Will on the death of one of the testators the legatee would be entitled to the property of the deceased testator unless there is specific direction to the contrary. As Ext. A-1 Will was executed by Plaintiff's father and mother and as it does not contain any clause whereby it can be held that on the death of Plaintiff's father his right in the property would devolve on his mother, the position is that on father's death his share devolved on the legatee, the Plaintiff.

9. For the forgoing reasons, I hold that Plaintiff is entitled to one half right in the plaint schedule property being the legatee under Ext. A-1 Will. Ext. B-2 executed by his mother cannot have any impact on his claim as per the bequest made by his father in his favour. In the result, suit is decreed in favour of the Plaintiff holding that he is entitled to one half right in the plaint schedule property.

The judgment and decree of the Courts below are set aside and the suit is decreed as stated above. The second appeal stands allowed. No costs.