
(1990) 02 KL CK 0054
In the High Court Of Kerala
Case No : A.S. No. 321 of 1981

Madhavan Ezhuthachan

APPELLANT

Vs

Sreedharan Ezhuthachan and Others

RESPONDENT

Date of Decision : 13-02-1990

Acts Referred:

Registration Act, 1908 — Section 17(1)

Citation : (1990) 02 KL CK 0054

Hon'ble Judges : Pareed Pillay, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer and P.K. Balasubramanian, for the Appellant;
T.R. Raman Pillai, K.K. Unni and R.D. Shenoy, for the Respondent

Final Decision : Dismissed

Judgement

Pareed Pillay, J.—Plaintiff is the Appellant. He filed the suit for partition and declaration that Ext. B-13 (copy of the same is Ext. A-1) is not binding on him. He claims 1/4 share in the properties.

2. Grandfather of the Plaintiff and Defendants 1 to 3 had two sons, Raman Ezhuthachan and Krishnan Ezhuthachan. Plaintiff and Defendants 1 to 3 are the sons of Krishnan Ezhuthachan and 4th Defendant is his widow. Raman Ezhuthachan died as a bachelor. Raman Ezhuthachan and Krishnan Ezhuthachan died in an epidemic in 1115 M.E. It is the case of the Plaintiff that under a mistaken belief that the 4th Defendant is also entitled to a share in the properties and due to pressure exerted on him Ext. B-13 agreement was executed on 13th August 1975 to divide the properties among himself and the Defendants. Plaintiff contended that the terms and conditions in Ext. B-13 were not adhered to while Ext. B-14 was executed purporting to divide the properties, that there is a fundamental mistake in the agreement as the 4th Defendant was given a share in the properties, that he was not informed of the execution of Ext. B-14 and that it is not binding on him.

3. Defendants contended that Plaintiff is estopped from challenging Ext. B-14, that Ext. B-13 is a valid family settlement and that pursuant to it Ext. B-14 partition deed was executed. The trial court held that Ext. B-14 partition deed was made in conformity with Ext. B-13 agreement and no departure has been made therefrom at least as far as the Plaintiff is concerned and in such circumstances it cannot be said that Ext. B-14 is either incomplete or inoperative.

4. Admittedly the parties are governed by Hindu Mitakshara Law. Contention of the Plaintiff is that his mother (4th Defendant) is not entitled to any share in the properties and so Ext. B-13 which gives a share to her suffers from a fundamental mistake and consequently Ext. B-14 purporting to divide the properties is not binding on him. Thus, his main plank of defence is that Ext. B-13 is vitiated by the fundamental mistake of allotting the 4th Defendant a share whereas she is actually not entitled to it. Counsel for the Plaintiff submitted that the parties were under a mistake that the 4th Defendant is entitled to a share and so no weight can be attached to Ext. B-13 which detrimentally affects Plaintiff's legitimate share. He argued that if the 4th Defendant has no share in the properties Plaintiff is very well entitled to share along with Defendants 1 to 3 and as the suit is precisely for that share the Sub Judge ought to have decreed it.

5. Plaintiff is a signatory to Ext. B-13 along with Defendants 1 to 4. In Ext. B-13 it is stated that A schedule properties are jointly set apart to Defendants 1 to 4 and B schedule to the Plaintiff. It is also stated that the partition deed will be registered after 12th September 1975 and before 20th September 1975 and that the parties will take separate possession. Defendants contended that despite their best efforts Plaintiff did not join in the execution of Ext. B-14 and by dissociating himself from it he cannot back out from the terms and conditions he had agreed to in Ext. B-13. It is pertinent to note that in Ext. B-14 also the very same properties are set apart to the Plaintiff as in Ext. B-13.

6. Counsel for the Plaintiff submitted that Ext. B-14 is not consistent with Ext. B-13 as Defendants 1 to 4 were allotted properties separately, whereas in Ext. B-13 it is stated that they will form one group. That does not in any manner affect the right of the Plaintiff to the properties set apart to him as B schedule in Ext. B-13. Another contention is that though Ext. B-13 contemplates some properties to be given to the sisters of Defendants 1 to 3, Ext. B-14 is totally silent about it. That by itself is not sufficient to hold that Exts. B-13 and B-14 are not binding on the Plaintiff. It is next contended that Ext. B-14 is incomplete as the Plaintiff has not signed it though the intention of the parties was that it should be signed by the Plaintiff also. There is hardly any evidence to accept the Plaintiff's contention that Ext. B-13 is vitiated by any fraud, undue influence or coercion.

7. Counsel for the Plaintiff contended that a Hindu widow in the erstwhile Cochin State has no right in the joint family property of her husband and so even though the Plaintiff and Defendants 1 to 3 wrongly and under mistaken impression executed Ext. B-13 conferring right on their mother (4th Defendant) it will not be

of any consequence as she did not have any legal right in the properties. It is argued that the fundamental mistake in giving a share to the 4th Defendant vitiates Ext. B-13. Counsel contended that as the parties belong to erstwhile State of Cochin 4th Defendant cannot claim any share in the properties. He relied on *Adusmilli Seethalakshamma Vs. Yerneni Chalamaiah and Others*, where the Andhra Pradesh High Court held thus:

Where the parties are governed by the Madras School, the wife or mother cannot claim any share in the joint family property, as the practice of allotting shares to females, even if it existed at some distant period of time, has become obsolete in Southern India.

He also relied on *Thangavelu v. Court of Wards* AIR 1947 Mad 38 where the Madras High Court held:

No doubt, as pointed out in Mayne's Hindu Law (10th Edition) at page 543, the rules of the Mitakshara allotting a share to wives, widows, mothers and grandmothers have become obsolete in Southern India owing to the influence of *Smritichandrika* and the *Saraswati Vilasa*, but in the northern provinces the Rules are still in force.

In *Audemma v. Varadareddy* AIR 1949 Mad 31 the Court

In *Audemma v. Varadareddy* AIR 1949 Mad 31 the Court held:

It may be pointed out that at one time under the law of the Mitakshara a Hindu mother was, at the partition of coparcenary property, entitled to be allotted a share equal to that of her son or step-son, and that the practice of allotting shares upon partition to females has long since become obsolete in Southern India and that the right survives only as a right for provision of maintenance which must not in any case exceed the share of her son.

8. In *Lakshmi Chand Khajuria and Others Vs. Ishroo Devi*, the Supreme Court observed that under the Mitakshara Law, excepting Madras when there is a partition between the son and his father the mother is entitled to a share equal to that of the son. It was contended before the Supreme Court that according to Mitakshara Law except in Madras when there is a partition between son and his father mother is entitled to a share equal to that of the son. In support of the above contention Mulla's Hindu Law, 14th Ed., page 403, paragraph 315 was referred. There it is stated that while the wife cannot demand a partition, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. To the same effect is the passage in Mayne's Hindu Law, 11th Ed., page 534, paragraph 434 where it is stated:

According to the Mitakshara law, the mother or the grandmother is entitled to a share when sons or grandsons divide the family estate between themselves, but she cannot be recognised as the owner of such share until the division is actually made, as she has no preexisting right in the estate except a right of maintenance.

In *Dular Koeri v. Dwarkanath Misser* ILR Cal. 234 it was held that under the Mitakshara law when partition of joint family property takes place during the father's life time at the instance of the son, the mother of the son is entitled to a share equal to that of her husband and her son; and she is entitled to have the share separately allotted and to enjoy that share when so allotted. In *Sumrun Thakoor v. Chunder Mun Misser and Ors.* ILR Cal. 17 Calcutta High Court held that under the Mitakshara law where a partition takes place between a father and a son, the wife of the father is entitled to a share. In *Hosbanna Devanna Naik v. Devanna Sannappa Naik and Ors.* ILR Bom 468 it was held that a stepmother is entitled to a share on partition between the father and his sons. In *Partap Singh v. Dalip Singh* ILR All 596 it was observed that in a partition between a Hindu father and his son the wife of the father has a right to a share equal to that of the father or the sons.

9. In Mulla's Hindu Law it has been observed that in Southern India the practice of allotting shares upon partition to females has long since become obsolete. This passage has been approved in *Adusmilli Seethalakshammamma Vs. Yerneni Chalamaiah and Others*, . A long line of decisions held that in Madras though Mitakshara Law is applicable the position is that in a partition between the sons and the father, the mother is not entitled to any share.

10. A Full Bench of this Court in *Saraswathi Ammal v. Anantha Shenoi* 1965 KLT 141 held that the Hindu Law as administered in Travancore was in certain respect not the same as that was prevalent in the Madras State and that the principles of Hindu Law by Mulla made little reference to the Laws and customs current in the states of Travancore or Cochin. The Court held that general observations made by Mulla on the basis of practice in Madras cannot therefore be taken as reflecting the Hindu law in practice in Travancore or Cochin. It was further observed that in the absence of precedents of the High Courts of Travancore or Cochin reference has to be made to the law laid in the original texts themselves. Learned Counsel for the Plaintiff did not bring to my notice any decision of the Cochin High Court for the proposition that a widow will not be entitled to any share when the joint family property is partitioned among her sons. As the Full Bench of this Court has held in *Saraswathi Ammal v. Anantha Shenoi* 1965 KLT 141 that general observations made by Mulla on the basis of practice in Madras cannot be taken as practice prevalent in Travancore or Cochin and as there are no judicial decisions to the effect that widows will not be entitled to any share when partition is effected by her sons Plaintiff's contention that the 4th Defendant is not entitled to any share cannot be accepted.

In *Saraswathi Ammal v. Anantha Shenoi* 1965 KLT 141 this Court held:

According to the Mitakshara, the widow is entitled to a share of the joint family properties at a partition thereof among her sons, equal to that of a son or a moiety thereof as the case may be. The normal right of a Hindu widow is to maintenance out of the income of the whole of the joint family estate; but when the joint family estate is divided she is entitled to a share of the estate in lieu of

her right to maintenance. Her right to the share arises on partition among the sons, and then only.

There is no merit in the contention that as the parties belonged to Cochin State the 4th Defendant is not entitled to any share when her sons partitioned the joint family properties and so Ext. B-13 has no validity.

11. Even assuming that the 4th Defendant has no right in the properties Ext. B-13 cannot be assailed as it is an arrangement among the members of the family and in such family arrangement though she has no right a share is given to her by other sharers. Various recitals in Ext. B-13 conclusively prove that Parties have treated it as a family arrangement. The essential prerequisites of a family arrangement are as follows:

- (1) there must be an agreement amongst the various members of the family intended to be generally and reasonably for the benefit of the family,
- (2) the agreement should be with the object either of compromising doubtful or disputed rights or for preserving family property or the peace and security of the family by avoiding litigation or for saving its honour,
- (3) being an agreement, there is consideration for the sons, the consideration being the expectation that such an agreement or settlement will result in establishing or ensuring amity and goodwill amongst the relations,
- (4) it must be bona fide so as to resolve family disputes,
- (5) it must be voluntary and not induced by fraud, coercion or undue influence.

[See M.N. Aryamurthy and Another Vs. M.D. Subbaraya Setty (Dead) through L. R. and Others, and Kale and Others Vs. Deputy Director of Consolidation and Others, .]

Ext. B-13 reveals that members of the family contemplated partition of the properties and prelude to it the agreement was executed. It has all the characteristics of a family arrangement.

12. Courts are always reluctant in disturbing family arrangement on technical grounds. As court are expected to advance substantial justice between the parties, the endeavour must always be to uphold it and not to discard it. If family arrangements are unsettled on technical or trivial grounds, it will lead to undesirable results and unending feuds among the members of the family. To avoid acrimony and strife among the members of the family the Court will accept the family settlement provided it is voluntary and not induced by fraud, coercion or undue influence. The Supreme Court in Kale and Others Vs. Deputy Director of Consolidation and Others, went to the extent of saying that where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect, the rule of estoppel is applied to shut out the plea of the person who being a party to the family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some

material benefits. Admittedly Plaintiff has affixed his signature in Ext. B-13 and in Ext. A-1 duplicate. The very fact that a duplicate copy was prepared and taken by Plaintiff and that only the properties to be allotted to the share of the Plaintiff have been shown separately shows that the agreement was effected at his instance and initiative.

13. In *Krishna Biharilal v. Gulabchand and Ors.* 1971 Supp S.C.R. 27 the Supreme Court observed that the word "family" has a very wide connotation and could not be confined only to a group of persons who were recognised by law as having a right of succession or entitled to a share. The Court said:

To consider a settlement as a family settlement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in *Ram Charan Das Vs. Girjanandini Devi and Others*, at pp. 850 and 851) the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement. The courts lean strongly in favour of family arrangements to bring about harmony in a family and do justice to its various members and avoid in anticipation future disputes which might ruin them all.

In *S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others*, the Supreme Court observed:

If in the interest of the family properties or family peace the close relations settle their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.

In *Maturi Pullaiah and Another Vs. Maturi Narasimham and Others*, the Supreme Court held:

Though conflict of legal claims in praesenti or in future is generally a condition for the validity of a family arrangement, it is not necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it.

In *Ram Charan Das Vs. Girjanandini Devi and Others*, the Supreme Court held thus:

The transaction of a family settlement entered into by the parties who are members of a family bona fide to put an end to the dispute among themselves, is not a transfer. It is not also the creation of an interest. For, in a family settlement each party takes a share in the property by virtue of the independent title which

is admitted to that extent by the other parties. Every party who takes benefit under it need not necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary to show is that the parties are related to each other, in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say, affection.

Thus, the Courts have taken a very liberal and broad view regarding the validity of the family settlement and have always tried to uphold it and maintain it. The dominant idea is that if by consent of parties a matter has been settled, it should not be allowed to be re-opened by the parties to the agreement on frivolous or technical or untenable grounds.

14. Having found that Ext. B-13 is a family settlement the next question to be considered is as to whether it is invalid in view of the fact that a share was allotted to the mother of Plaintiff and Defendants 1 to 3 when she is not legally entitled to any share. While construing a family settlement the word "family" has to be interpreted not in a narrow sense of being a group of persons with legal right of succession or inheritance and having a claim to a share in the property.

15. In *Kale and Others Vs. Deputy Director of Consolidation and Others*, the Supreme Court held that even where a party has no title and the other parties relinquish all their claims or titles in favour of such a person and acknowledge him to be the owner, antecedent title must be assumed and the family arrangement will have to be upheld. As Plaintiff and Defendants 1 to 3 voluntarily chose to give a share to their mother as per Ext. B-13 the contention that she is not legally entitled to any share and so it cannot be given any effect is not tenable. Even if it is assumed that she had no share under the Mitakshara Law as contended by the Plaintiff, Ext. B-13 cannot be held to be invalid on that score. Plaintiff and Defendants 1 to 3 decided to give a share to their mother as they desired to provide for her old age and also for a better peaceful and cordial family atmosphere. When coparceners decided to divide the properties among themselves and as they agreed voluntarily to give a share to their mother, it cannot be held that the agreement is of no legal effect as the mother is not entitled to a share under the personal law. Even if there is some doubt as to the 4th Defendant's entitlement to any share in the properties that will not be sufficient to reject Ext. B-13.

16. It is next contended by the counsel for the Plaintiff that Ext. B-13 being not registered is inadmissible in evidence. Whether a family arrangement needs registration or not is the next point to be considered. As Ext. B-13 is only a memorandum of what was agreed to by the parties and as it stipulates registration of partition deed to follow it does not require registration. In *Roshan Singh v. Zile Singh* AIR 1988 S.C. 881 the Supreme Court held:

It is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to

it, requires registration u/s 17(1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction.

Section 17(1)(b) of the Registration Act lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property. A reading of Ext. B-13 would show that it is not an instrument of partition. It is merely a memorandum regarding the decision arrived at between the parties as to the manner in which the eventual partition has to be effected. As postulated u/s 17(1)(b) of the Registration Act the registration of a document is compulsory, if the document by its own force operates or purports to operate to create or declare some right in immovable property. A mere agreement to divide the properties does not require registration. But if the writing itself effects a division, it must be registered. From a reading of Ext. B-13 it cannot be said that it effected a partition of the properties. If that be so, Ext. B-14 would not have been necessary. As Ext. B-13 does not evidence any partition by metes and bounds, it does not come within the purview of Section 17(1)(b) of the Registration Act. Moreover, Ext. B-13 is pursuant to Ext. X-7. Ext. X-7 shows that an agreement was reached among the coparceners. As Ext. B-13 is only a family settlement which is to be followed by a regular partition deed as stipulated by the recitals in Ext. B-13, it cannot be said that Ext. B-13 requires registration.

17. Even if it is held that Ext. B-13 requires registration, it would operate as a complete estoppel against the Plaintiff. In *S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others*, the Supreme Court observed:

Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times, in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

Hence even if it is held that Ext. B-13 requires registration. It would not help the Plaintiff's case as he is estopped from taking a different stand having agreed to the entitlement of a share to his mother.

18. In *Karthiyani Amma v. Kesava Pillai* 1957 KLT 355 a Division Bench of this Court held that in a particular case where all the parties agreed to specific arrangement for division the recalcitrant attitude of a party who did not join the actual division would not affect the matter. Having been a party to Ext. B-13 and as there is no evidence of any fraud, coercion or undue influence so far as it is concerned, Plaintiff cannot just ignore it and contend that Ext. B-14 has no validity as he is not a signatory to it.

19. The trial Court was justified in holding that Ext. B-13 agreement and Ext. B-14 partition deed are valid and binding up on the Plaintiff. The Sub Judge held that withdrawal from the execution and registration of the partition deed by the Plaintiff was only due to an afterthought to gain further advantage if possible. There is hardly any evidence to hold that Ext. B-13 is vitiated by any one of the grounds alleged in the plaint. Properties have been set apart to the Plaintiff as per Ext. B-14. Plaintiff is only entitled to that Plaintiff is not entitled to a declaration that Ext. B-13 is no longer in force and it is not binding on him. There is no merit in the appeal. The judgment and decree of the trial Court are confirmed. The appeal is dismissed with no order as to costs.