

(1959) 02 KL CK 0020
In the High Court Of Kerala
Case No : S.A. No. 401 of 1955 (E)

Manikkan Nair and Others

APPELLANT

Vs

Madhavan Nair and Others

RESPONDENT

Date of Decision : 02-02-1959

Acts Referred:

Citation : (1959) KLJ 603

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Advocate : M.K. Narayana Menon and R. Raya Shenoi, for the Appellant; T.S. Venkiteswara Iyer and C.S. Ananthakrishna Iyer, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Iyengar, J.—This second appeal is by the plaintiffs 1 to 3 against the dismissal of their suit by the court below in reversal of the decree in their favour passed by the trial court. The question turned upon the validity or otherwise of Ext. I sale of the plaint schedule property belonging to the tarwad of the plaintiffs 1 and 2, by their mother the 2nd defendant on her own behalf and as guardian of the plaintiffs 1 and 2 alleging them to be minors, jointly with their uncle Kunju Nair, died, and in favour of the latter's son-in-law the 1st defendant in the case. According to the plaint, the plaintiffs 1 and 2 were at date of Ext. I, viz., 12-1-1117, majors aged 22 and 19 and intended as such to be co-executants thereof and had indeed on such basis joined in Ext. I and signed in the first sheet. Before registration however the 2nd plaintiff's husband Raman Nair, deceased, who was not satisfied with the necessity for the transaction, had intervened and struck out their names from the document and taken them away. But Kunju Nair and the 1st defendant had gone on with the execution and registration of Ext. I, as if the plaintiffs 1 and 2 were minors aged 17 and 16 and got the illiterate 2nd defendant to co-operate with them in the matter. Anyhow Ext. I must be deemed to be void in its inception and could not validly convey the property. The plaintiffs had an alternative case that Ext. I was invalid on the

ground of want of consideration and necessity. This depended on the fact that the extra consideration of Rs. 100 alleged to have been received in cash on the date of sale did not, according to the plaintiffs, actually pass and again Ext. I being for the very inadequate return of Rs. 200 was totally uncalled for on any principle of necessity. On the questions above as to the age of the plaintiffs 1 and 2 and the necessity for Ext. I (apart from the aspect of consideration which they both found for 1st defendant) the courts below differed among themselves and have their conflicting decrees. It is these two aspects again that formed the main subjects of controversy before me. Taking up first the question of age, the case of the 1st defendant is that the plaintiffs 1 and 2 were really minors aged 17 and 15 as mentioned in Ext. I and also in Ext. V partition deed executed in the family on the same date in respect of the balance properties. His explanation for the initial entry as to their being majors and the subsequent correction was that the Sub-Registrar D.W. 4 before whom the parties appeared for registration of Ext. I found plaintiffs 1 and 2 to be too young to join in the document personally and thereupon a prior document Ext. II dated 3-9-1108 in which the plaintiffs had been described by the 2nd defendant and Kunju Nair to be 9 and 6 was resurrected and conformance thereto was had both as regards Ext. I and V. This explanation was accepted by the learned Judge but discarded by the Munsiff. Having heard learned counsel and gone through the records I may say at once that this explanation seems to be more consistent than the allegation made by the plaintiffs in this connection. For, Ext. II is dated 3-9-1108 when there was no controversy and the parties could be trusted to say correctly. The plaintiffs' strong point was Ext. A, entry in the admission Register of St. Joseph's Primary School at Perambra, Chalakudi as to the date of birth of one "Ammini" as 12-6-1097, this Ammini according to the plaintiffs being the 2nd plaintiff. I agree however with the learned Judge that there is no proper or sufficient proof as to the reference in Ext. A to the 2nd plaintiff or the correctness of the entry. And again if this age were correct, the 2nd plaintiff would be 11 at date of Ext. II and no mother would mistake a child of 11 as aged 6 only which we found mentioned in Ext. II. The oral evidence in the case of the 2nd defendant as P.W. 3 nor her elder sister as P.W. 4 nor again of her brother as P.W. 7 that the 2nd plaintiff was really major at Ext. I date does not convey conviction, particularly as the horoscope of the 2nd plaintiff or the Thalakuris of the plaintiffs 1 & 2 said to be available are not produced. D.W. 4 Sub-Registrar does not remember what happened exactly at time of registration of Ext. I but he is clear that if he felt doubt as to age on the appearance of parties before him he would certainly have insisted on proper proof. There was also the evidence of D.W. 5 scribe of Ext. V to speak of the circumstances in favour of the 1st defendant's case. I therefore hold that plaintiffs 1 and 2 were properly described as minors in Ext. I and there is no want of validity in Ext. I on account solely of its execution by the 2nd defendant as guardian on their behalf as well.

2. The next question is as to the necessity for Ext. I. The learned Munsiff had himself found that Ext. I was not for any low value and there was no fraud

attendant on its inception and on the other hand this suit had been caused by the 3rd plaintiff stranger in working out his scheme of revenge against the 1st defendant on other counts. The Munsiff had indeed found against Ext. I because according to him, the prior encumbrancer D.W. 2 was not really serious when he issued Ext. IV and IV-a notices of demand for the monies due under Ext. III hypothecation in his favour and again the cash consideration of Rs. 100 were not shown to be utilised for specific needs of the tarwad. But it was wrong of the trial court to infer lack of seriousness in D.W. 2 because only he accepted a usufructuary mortgage from the 1st defendant after his taking of Ext. I of other properties innovation of Ext. III. The trial court was not also correct in appreciating the straightened circumstances of the tarwad at time of Ext. I, which made it imperative for it to raise the extra Rs. 100/- under Ext. I. The learned Judge has gone into this aspect and it is therefore unnecessary to repeat it. And once it is found that there was no conceivable reason why Kunju Nair should prefer his son-in-law to the members of his own tarwad, it is difficult to accept the plaintiffs' case as to the invalidating circumstances of Ext. I, particularly when the 2nd defendant, their mother, has joined in it.

3. Learned counsel for the plaintiffs argued strongly that the 1st defendant had failed to prove that any portion of the amount paid in cash was utilised either for tarwad necessity or benefit, let alone the non-mention in Ext. I of the purpose for which the amount was utilised, and he criticised the reasoning of the court below based on the need for maintenance, for, that is not the case of the 1st defendant. But the 1st defendant as D.W. 1 said that out of the amount of Rs. 100 paid in cash, a pronote debt due to D.W. 2 and the interest on Ext. III were paid and that a compound was purchased for a kudiyiruppu. D.W. 2 said that in addition to the amount given under Ext. III there was a debt due under a promissory note which was for arrears due on Ext. III date. And Ext. B sale deed by the 2nd defendant and Kunju Nair, on 20-10-1117 after Ext I and not so far impeached by the plaintiffs 1 and 2, is seen to have raised Rs. 37 in connection with the purchase of a kudiyiruppu, apparently to supplement the resources obtained under Ext. I. Assuming however that this portion of the consideration is not shown to be properly applied, the true question in these cases is whether the sale itself was one which was justified by legal necessity. And if the sale is held to be justified but there is no evidence as to the application of a portion of the consideration a presumption has been held to arise that it has been expended for proper purposes and for the benefit of the tarwad. See AIR 1927 37 (Privy Council) . I hold therefore along with the court below that there is no absence of necessity also so far as Ext I is concerned. The result is that the appeal fails and it is dismissed with costs.