
(1986) 05 KL CK 0007
In the High Court Of Kerala
Case No : A.S. No. 169 of 1986

Maroli Balan

APPELLANT

Vs

Maroli Dannu and Others

RESPONDENT

Date of Decision : 29-05-1986

Acts Referred:

Kerala Education Act, 1958 — Section 6, 6(1)

Citation : (1986) 23 KLJ 600

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : T.A. Ramadasan, for the Appellant;

Final Decision : Dismissed

Judgement

Paripoornan, J.—The first defendant in O.S. No. 95 of 1984. Sub Court, Tellicherry in the appellant. The suit was one for partition of the plaintiff schedule items A to C, namely 50 cents of land where a school is situated, the movables therein and the management of the school. The property originally belonged to the father of the plaintiffs and the first defendant. In Ext.A1 Partition deed 12-8-1983, Edakkanam L.P. School and 50 cents of land, where the said school is situated and the movables therein and also the management of the said school, were kept in common (A Schedule). The first defendant was authorised as the nominee of the proprietors to manage the school, to take the agricultural income from the holding and after meeting the expenses to divide the surplus among the co-owners. The first defendant is the eldest member of the family. He is also a teacher in the same school. Without caring for the other co-owners the first defendant is mismanaging the school and acting in his own self-interest. On these and other grounds, the suit was laid seeking partition and separate allotment of their 4/5 share to the plaintiffs in the suit properties. The second defendant-Assistant Educational Officer, Iritty was *exparte*. The first defendant raised many contentions. One of the contentions taken was that the suit is not maintainable. It was contended that the suit for partition of the school and its

properties is not maintainable in view of Section 6 of the K. E. R. Act. This plea was negated by the court below. The court below held that the suit is maintainable. It further held that the subject matter being a school and the land appurtenant to it, it cannot be partitioned by metes and bounds. It was felt that the proper course is to auction the suit properties, between the plaintiffs and the first defendant and then apportion the sale proceeds in proportion to the shares of the respective sharers. The first defendant has come up in appeal. Counsel for the appellant (1st defendant) contended that the court below was in error in holding that the suit is maintainable. It was also contended that the court below was not justified in ordering auction of the suit properties between the plaintiffs and the first defendant. This may result in the effacement of the school and so the court below should not have ordered the auction of the properties.

2. We heard counsel at length. There is no force in the submissions made by the appellant's counsel. It is conceded that plaint A schedule properties belong to the 4 plaintiffs and the first defendant and they are kept in common. Since the first defendant was the eldest member of the family and he is a teacher in the school, he was nominated to manage properties. Since plaintiffs' right to 4/5 in the suit properties is conceded, the only further question to be examined is whether Section 6 of the K. E. R. Act in any way bars the filing of the suit. Section 6 (1) of the Kerala Education Act is as follows.

6. Restriction on alienation of property of aided school (1) Notwithstanding anything to the contrary contained in any law of the time being in force, no sale, mortgage, pledge, charge or transfer of possession in respect of any property of an aided school shall be created or made except with the previous permission in writing of such officer not below the rank of a District Educational Officer, as may be authorised by the Government in this behalf. The officer shall grant such permission applied for unless the grant of such permission will in his opinion, adversely affect the working of the school.

The said section restricts only alienation of the property of the aided school. The alienation may be by way of sale, mortgage, pledge, charge or transfer of possession." In the present case what is sought is only a partition of the property. There is no transfer or alienation as contemplated by Section 6 of the K. E. R. Act, It is settled law that a partition of the family property is not an alienation or a transfer in the strict sense--Vide Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel, . In O. P. No. 1298 of 1975 (1975 KLT SN 50 Case No. 128) Narendran J observed as follows:

When a running school as such with all its properties and rights to management is transferred, S. 6 of the Act will not be attracted. What is sought to be prevented by S. 6 is the alienation of any property of an aided school by an educational agency because in that case, the working of the School will be adversely affected when any property or properties of the school go into the hands of third persons. When a school is transferred as a going concern, such a difficulty will not arise and hence the prohibition in S. 6 cannot apply to such

transfer.

We concur with the above observations. In the light of the above, the plea that the suit for partition is hit by Section 6 of the Kerala Education Act is without force. We repel the said contention.

3. The only other contention urged by the appellant's counsel is regarding the direction to auction the suit properties between the plaintiffs and the first defendant and to apportion the sale proceeds in proportion to the shares of respective sharers. Once it is conceded that the plaintiffs have got 4/5 right and that they are entitled to get their shares, in what practical way partition can be effected is the only thing that falls for consideration. It is true that the suit properties cannot be partitioned by metes and bounds without adversely affecting the running of the school. In order to avoid that contingency the court below has directed to auction the suit properties between the plaintiffs and the first defendant, and then apportion the sale proceeds in proportion to the shares of the respective shares. This has been so done in order to see that the partition does not adversely affect the running of the school as such. We are of the view that the court below was justified in giving the aforesaid direction. No other contention was raised by the appellant's counsel. There is no merit in this appeal. It is dismissed in limine.