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**(2001) 11 KL CK 0090**  
**In the High Court Of Kerala**  
**Case No : C.R.P. No. 663 of 1996**

Mehaboob Beevi

APPELLANT

Vs

Taluk Land Board

RESPONDENT

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**Date of Decision :** 23-11-2001

**Acts Referred:**

Kerala Land Reforms Act, 1963 — Section 82(1), 84(1), 84(1A)

**Citation :** (2002) 1 KLJ 207

**Hon'ble Judges :** M.R. Hariharan Nair, J

**Bench :** Single Bench

**Advocate :** N.N. Sugunapalan, for the Appellant; K.L. Joseph, Government Pleader, for the Respondent

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## Judgement

M.R. Hariharan Nair, J.—The matter relates to the area to be surrendered as being beyond the ceiling limit allotted to the family of one K.V.S. Seethikoya Thangal. On 12.7.1976 the Taluk Land Board, Petinthalmanna passed an order finding that an area of 33.56 acres was liable to be surrendered. The declarant filed C.R.P. No. 3402/76 challenging the said finding. There was also C.R.P. No. 3405/76 filed by two claimants. On 29.3.1977 the C.R.Ps. were allowed and the matter remanded. It was directed that the scope of the partition of 1972 by document No. 2629 of the Sub Registry, Perinthalmanna should also be considered. On 27.9.1980 the Taluk Land Board passed fresh orders fixing the area to be surrendered as 21 acres 16.5 cents; that is, deleting an area of 12 acres and 39.5 cents from the area that was fixed as liable to be surrendered in the earlier order of 12.7.1976. C.R.P. 2319/81 was then filed alleging that the said fixation of area to be surrendered was done without necessary hearing. On 25.10.1985 this Court set aside the order of the Taluk Land Board dated 27.9.1980 and remanded the matter with directions. On 2.4.1991 the Taluk Land Board passed fresh orders reiterating the stand taken in the order dated 27.9.1980 and directing that the area to be surrendered is 21 acres and 16.5 cents. C.R.P.No. 865/91 was then filed challenging the said finding and as per order dated 1.3.1993 the C.R.P. was allowed again and it was directed that the

case set up by the claimants also should be considered. It is following the said remanded that the order dated 14.12.1996 was passed, and that is the order impugned in the revision.

2. Mr. N.N. Sugunapalan, who represented the petitioner,s submitted that the impugned order has been passed without considering the scope and ambit of Section 84(1) and 84(1A) of the Kerala Land Reforms Act and that the effect of the partition of 1972 vide document No. 2629/72 has not been properly considered.

3. A perusal of page 3 of the impugned order shows that the area for surrender has been fixed ignoring partition deed No. 2629/72. It was observed that the liability to surrender was reduced to 21 acres and 16.5 cents in the order dated 27.9.1980 as though document No. 2629/71 was a valid gift and as though there was a normal partition between the joint owners. It was also observed that there was actually no evidence to show that the parties to the partition deed had any right in the properties and that the name given as the partition deed is not sufficient to constitute it a legally valid partition. It was further held that as the defendant did not produce the original documents by which the properties were purchased to establish his claim and as the 4th and 5th children were aged only less than 11 years as on the date of document No. 1972, they were minors and it is beyond one's comprehension to believe that the income from the yaram in the name of the 5th child was substantial enough to enable the declarant to purchase various properties. It is also observed that the partition deed takes in land purchased prior to 1961 also and this disproves the claim of the declarant that the properties were purchased with the income from the yaram. It was therefore held that the deletion to the extent of 12 acres and 39.5 cents from the area to be surrendered contained in the order dated 27.9.1980 treating the partition as valid is not in order and that the deletion of 7.50 acres in favour of major son, Ahamed Koya Thangal and 4 acres and 89.5 cents in favour of major daughter Amina alias Kunhi Beevi is liable to be revoked. It is based on these findings that the area for surrendered was restored as 33 acres and 56 cents.

4. The question whether the properties were purchased with the income from yaram in the name of the 5th child does not appear to have much relevance in the present case. The document bearing No. 2629/72 is registered as through it is a partition deed. The parties to the partition are the declarant, his wife- Mehaboob Beevi, Ahamed Koya Thangal, who was aged 23 years, Amina and other minor children of the declarant.

5. Raman v. Taluk Land Board (1988 (2) KLT 211) death with a case where a document was executed as through it was a partition deed between the father and sons on the assertion that the properties belonged jointly to the executants. The court found that it was on a wrong understanding of the rights of the parties that the assertion was made and that actually the father was the absolute owner and he has created rights over the properties under the document in favour of his children. It was also found that it is not the nomenclature of the document

that decides the real character of the transaction; that it is open to the court to look into all relevant circumstances, including the nature of the rights the executants had, the relationship between the parties, the intention and the attendant circumstances. It was also observed that when the father alone had absolute rights over the properties included in the document and when the allotment of shares to the children with the declaration that the properties allotted should be enjoyed by them absolutely, the clear intention is that the properties should vest in the allottees who had no pre-existing title or rights and that such transfer in favour of the children can only be construed as gift.

6. When the dictum in the said decision is applied to the facts of this case, it can be seen that though document No. 2629/72 is styled as a partition, and even if the contention of the petitioners that the properties were acquired from the yaram is rejected, still, the documents has to be taken atleast as a gift. As already mentioned, out of the various allottees mentioned in the document only Ahamed Koya Thangal, to whom the B Schedule property was allotted, was a major as on the date of the document besides his parents. Even if the contention claiming protection u/s 84(1) of the Kerala Land Reforms Act that the partition is saved from the purview of the provisions relating to ceiling area is disallowed, the document, in the circumstances, will certainly fall under the scope and ambit of Section 84(1A) of the Act, which stipulates as follows:-

"84(1A). Notwithstanding anything contained in Sub-section (1), or in any judgment, decree or order of any court, or other authority, any voluntary transfer effected by means of a gift deed executed during the period commencing on the 1st day of January, 1970 and ending with the 5th day of November, 1974, by a person owning or holding land in excess of the ceiling area in favour of his son or daughter or the son or daughter of his predeceased son or daughter shall be not deemed to be, or ever to have been, invalid,-

(a) if the extent of the land comprised in the gift does not exceed the ceiling area specified in Clause (a) of Sub-section (1) of Section 82; and

(b) if the extent of the land comprised in the gift exceeds the ceiling area specified in the said clause, to the extent of that ceiling area;

Provided that nothing contained in this sub-section shall apply-

(a) to a transfer in favour of a person who was an unmarried minor on the 1st day of January, 1970;....."

7. It is clear from a perusal of the aforesaid provision that the saving from invalidity contemplated in the section will not be available in favour of any person who was an unmarried minor as on 1.1.1970. In the instant case, it is Seethi Koya Thangal, who alone was a major out of the beneficiaries as on 1.1.1970 and as far as the other children of the declarant are concerned, the protection contemplated in Section 84(1A) of the KLR Act will not be available.

8. It is true that document No. 2629/72 was executed after the crucial date of

1.1.1970. In *Pathumma v. State of Kerala* (1991 (2) KLT 822 (FB)) a Full Bench of this Court had occasion to consider the impact of Section 84(1A) on gift deed executed between 1.1.1970 and 5.11.1974. It was found that the intention behind the introduction of Section 84(1A) of the K.L.R. Act in the statute was to benefit the declarants by excluding the lands covered by gifts effected after 1.1.1970 from the computable extend of their holdings and that the benefit should go to the donors by reducing the extent of their holdings by the extent of the land covered by the gift and that it was not really meant for mere protection of the donees as such protection was already available to them by virtue of the decisions of the Court. Section 84(1A), it was held, operates to exclude the extent of lands covered by the transfers from the accountable holdings of the declarant as on 1.1.1970 and that this is only an extension of the benefit already conferred by Sub-section (1) in relation to gifts executed upto 1.1.1970.

9. In view of the said decision, as far as the properties in the B schedule to the partition are concerned, they having been allotted to a major son, deserves to be excluded from the total area available to the declarant as on 1.1.1970 for the purpose of computing the total area held by him and the area to be surrendered by him. Since the impugned order has not taken into consideration this crucial aspect and since the partition deed has been ignored in toto while arriving at the area to be surrendered, it has certainly to be set aside. I do so.

10. The matter is remanded to the Taluk Land Board with a direction to issue fresh notice to the petitioners in this revision as also to the claimants who had filed the earlier CRPs. and to decide the matter afresh taking into account the applicability of Section 84(IA) as clarified in this order. A necessary consequence of this order will be the need to grant another opportunity to the petitioners to choose the area to be retained. After considering all the relevant aspects including the option to be exercised as above, the Taluk Land Board will pass fresh orders re-fixing the area to be surrendered.

11. It is made clear that the notice to be served on the petitions and on the other claimants must either be through direct service through the Village Officer or through Registered Post Acknowledgment Due. If the claimants chose to remain absent for the hearing before the Taluk Land Board (as they have done now before this Court) they will be doing so at their own risk and it shall not be open to them to claim any further opportunity to present their case either on the merits of the claim or regarding the exercise of option regarding the area to be surrendered. In case no option is filed by the petitioners, it will be open to the Taluk Land Board to fix the area to be surrendered in its own discretion.

12. Re-transmit the records to the Taluk Land Board forthwith.