

(1995) 01 SC CK 0012

In the Supreme Court Of India

Case No : Civil Appeal No. 688 of 1994

M.K. Narayani Amma and another

APPELLANT

Vs

Chelera Kuniyil Devaki Amma and others

RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:

Citation : AIR 1995 SC 1155 : (1995) 1 SCALE 677 : (1995) 2 SCC 643 Supp : (1995) 1 UJ 497

Hon'ble Judges : S. B. Majmudar, J;Kuldip Singh, J;B. L. Hansaria, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S.B. Majmudar, J.—The appellants (original plaintiffs) have challenged the order of the High Court of Kerala in Second Appeal No. 497 of 1990-A. The High Court dismissed the Second Appeal of the appellants, thereby confirmed the decree of dismissal of the appellant's suit as passed by the Trial Court and confirmed by the District Judge in the First Appeal. A few relevant facts may be noted at this stage. The appellants claiming to be the heirs of one Govindan Nambiar, who died on 12.3.1976, sued his widow Devaki Ammam (Defendant No. 1) and her children through Govindan Nambiar and also the alienees of some of the properties. The appellants contended that the Original Plaintiff No. 1, M.K. Narayani Amma, was the lawfully married wife of deceased Govindan Nambiar and on his death, in the schedule properties which belonged to Govindan Nambiar, the appellants and Defendants Nos. 6 and 7 had a share being his widow and her children. The defendants resisted the suit mainly on two grounds - firstly, Plaintiff No. 1 was not legally married wife of deceased Govindan Nambiar as when she is said to have married Govindan Nambiar, Defendant No. 1 (Devaki Amma), his earlier wife, was alive and, therefore, the alleged second marriage of Plaintiff No. 1 with Govindan Nambiar was illegal. Consequently, Plaintiff No. 2 and Defendants Nos. 6 and 7, who claimed to be the children of Govindan Nambiar could not have any share in the properties left by Govindan

Nambiar. The second defence was that in any case Govindan Nambiar in his life time had executed a gift deed by which the suit properties were gifted to the contesting defendants and, therefore, on there concurrent, findings date of the death of Govindan Nambiar the suit properties did not belong to him but belonged to the defendant-donees and hence also the suit for partition was liable to be dismissed. The learned Trial Judge came to the conclusion that the suit was liable to be dismissed. It was held that Plaintiff No. 1 was lawfully married wife of deceased Govindan Nambiar and hence the plaintiffs could not claim any share in the properties left by Govindan Nambiar. However, it was also held that by virtue of gift deed executed by Govindan Nambiar in favour of the contesting defendants, the deceased Govindan Nambiar ceased to have any interest in the suit properties at the time of his death. Consequently, there was no question of partitioning the suit properties between the contesting parties. The dismissal of the suit was confirmed in appeal by the District Court. The appellants, as noted earlier, unsuccessfully carried the matter in Second Appeal which was also dismissed.

2. In this civil appeal, we have heard the learned Counsel for the contesting parties. In our view no case is made out for our interference with the decrees of dismissal as passed by the Trial Court and confirmed by the Appellate Court and the High Court in the Second Appeal. There were concurrent findings of both the courts below, that Govindan Nambiar in his life time had executed a valid gift deed in favour of the contesting defendants and that the schedule properties did not belong to him when he died. On this short ground the appellants were liable to fail and their suit was required to be dismissed and that is exactly what has been done by all the courts below. However on the issue of the legality of the marriage of Plaintiff No. 1 and legitimacy of her children through Govindan Nambiar, the Trial Court took the view that Plaintiff No. 1, Plaintiff No. 2 and Defendants Nos. 6 and 7 were the wife and children of the deceased Govindan Nambiar. Despite this finding the Trial Court dismissed the suit as it took the view that the gift deed was validly executed in favour of the contesting defendants. The Appellate Court confirmed the decree of dismissal not only on the ground that the gift deed was validly executed in favour of the contesting defendants but also on the additional ground that the marriage of Govindan Nambiar with Plaintiff No. 1 could not be recognised and it was void. Thus this was an additional ground given by the District Court to confirm the decree of dismissal passed by the Trial Court. The result was that the appeal was dismissed. The Second Appeal was also dismissed by the High Court on both grounds, namely, that there was valid gift deed executed by Govindan Nambiar in favour of the contesting defendants. It was also held agreeing with the First Appellate Court that Plaintiff No. 1 was not lawfully married wife of Govindan Nambiar and Plaintiff No. 2 and Defendants Nos. 6 and 7 were also not, therefore, legitimate children of Govindan Nambiar begotten by Plaintiff No. 1 through Govindan Nambiar.

3. Learned Counsel for the appellants strongly assailed the aforesaid two findings

reached by the First Appellate Court as well as the High Court. In our view, it is not necessary in the present proceedings to go into the question whether Plaintiff No. 1, M.K. Narayani Amma, was legally married wife of Govindan Nambiar and whether Plaintiff No. 2 and Defendants Nos. 6 and 7 were legitimate children of Govindan Nambiar through Plaintiff No. 1. The reason is obvious. All the courts below have confirmed the decree of dismissal of the suit of the appellant-plaintiffs on the ground that the suit properties did not belong to Govindan Nambiar at the time of his death. Therefore, they were not available for the partition. That finding is based on a further finding that in his life time, he executed a valid gift in favour of the contesting defendants so far as the suit properties were concerned. This was a pure finding of fact, which could not be interfered with. On this finding it was not necessary for the courts below to go into the further question regarding the legitimacy of Plaintiff No. 2 and his brothers Defendants Nos. 6 and 7 and also about the validity of the marriage of Plaintiff No. 1 with Govindan Nambiar. Issue on this aspect becomes redundant and no finding is required to be given on this issue. We, therefore, vacate the finding on this issue as reached by the lower Appellate Court against the appellants and as confirmed by the High Court. We, however, confirm the decree of dismissal of the suit only on the short ground that the plaint schedule properties were not available for partition when Govindan Nambiar died. The Civil Appeal is dismissed subject to the aforesaid observations and vacating of finding on the issue of legality of marriage of Plaintiff-appellant No. 1 and legitimacy of Appellant No. 2 and his brothers, Defendants. Nos. 6 and 7. In the facts and circumstances of the case, there will be no order as to costs.