

(2026) 02 KL CK 1652

In the High Court Of Kerala

Case No : Regular Second Appeal No. 51 Of 2023

Supriya Suresh Kammath

APPELLANT

Vs

R. Jayachandra Kammath S/O Late A.N.Raya Kammath

RESPONDENT

Date of Decision : 02-02-2026

Acts Referred:

Code of Civil Procedure, 1908 — Section 100

Citation : (2026) 02 KL CK 1652

Hon'ble Judges : Easwaran S., J

Bench : Single Bench

Advocate : Reji George, Joe Joseph Kochikunnel, Manju Mohan, Saisankar.S, Aayshath Najila Schemnad, T.S.Harikumar, P.B.Sahasranaman, Chetan Krishna

Final Decision : Dismissed

Judgement

Easwaran S., J

1. Does a surviving account holder of a joint account of a bank locker have the right to take the articles inside the locker by applying the principle of "either or survivor" ignoring the rights of a legatee under a Will?.

2. This appeal by the 1st defendant raises certain intricate questions on the principles of "either or survivor", which is normally found in a joint account with a bank. In the present case, the dispute is regarding the operation of a locker kept in the 2nd defendant – Canara Bank by late Sreedevi S. Kammath, which contains approximately 180 sovereigns of gold ornaments. The plaintiff claims that, based on a registered Will executed by late Sreedevi S. Kammath, he has an absolute title over it, whereas the 1st defendant/appellant claims that the ornaments were gifted to her by late Sreedevi S. Kammath and that, going by the principles of "either or survivor", on the death of one of the joint holders of the account, the entire gold ornaments inside the locker will automatically vest in her. In addition to the above, she also claims that the ornaments belong to her as they were gifted by late Sreedevi S. Kammath and thereby setting up an

independent title.

3. The brief facts necessary for the disposal of the appeal are as follows:

3.1. The plaintiff sued the 1st defendant/appellant when there was a refusal on the part of the 1st defendant to return the entire gold ornaments kept inside the locker with the 2nd defendant - bank. It is an admitted fact that, a locker was opened with the Canara Bank, Banerji Road, Ernakulam Branch, by late Sreedevi S. Kammath and the appellant on 19.04.2013. Late Sreedevi S. Kammath had deposited all the gold ornaments inside the said locker. Before the aforesaid act, late Sreedevi S. Kammath had executed a registered Will bearing No.131/2016 dated 30.01.2009, by which, it is stated that she has bequeathed her entire gold ornaments (Meyyabharanangal) to the plaintiff. According to the plaintiff, late Sreedevi S. Kammath died on 27.03.2016 and there were attempts by the 1st defendant/appellant to open the bank locker and remove the contents of the locker and hence, necessitated the filing of the suit seeking for a permanent prohibitory injunction restraining the 1st defendant from opening the joint account and also a consequential mandatory injunction directing the 2nd defendant - Bank to hand over the entire gold ornaments.

3.2. The 1st defendant contested the suit contending that, late Sreedevi S. Kammath had gifted her ornaments to the 1st defendant absolutely and the 1st defendant and her husband felt that those ornaments should be equally distributed among all the relatives and they had shared the thought with late Sreedevi S. Kammath. Thereafter, late Sreedevi S. Kammath had informed the 1st defendant that she had absolutely given the ornaments to the 1st defendant and she wanted the 1st defendant to use the same and it is for the 1st defendant to decide as to what should be done in respect of the gold ornaments. It was further contended that, after the demise of Sreedevi S. Kammath, the elders of the family met and discussed how the assets should be dealt with and the 1st defendant informed at the gathering that a few of the gold ornaments gifted to her by late Sreedevi S. Kammath are kept in the bank locker and though the ornaments absolutely belong to the 1st defendant, she is willing to distribute the same with her relatives. It was further stated that, the plaintiff was also present in the meeting and agreed to the same. As regards the Will, it was submitted that, going by the Will, the plaintiff will not get any right, because what is bequeathed is only the Meyyabharanangal and not the entire gold ornaments.

3.3. Before the trial court, the plaintiff summoned the account opening forms in the agreement between the deceased, 1st defendant and the bank. The 1st defendant, in the meantime, served on the plaintiff interrogatories asking the plaintiff certain questions. In response to the said application, a counter affidavit, as well as an additional counter affidavit, was filed by the plaintiff, pointing out the entire list of gold ornaments which late Sreedevi S. Kammath had in her possession. The trial court appointed an Advocate Commissioner, who visited the Bank and opened the account and verified the contents of the account and

submitted Ext.C1 report detailing the list of gold ornaments which were available inside the locker along with the note stated to have been written by late Sreedevi S. Kammath, as to how the gold ornaments were required to be distributed. With the materials on record, the trial court proceeded to consider the respective claims and found that the plaintiff was entitled to succeed inasmuch the Will executed in his favour gave him absolute right to claim possession over the gold ornaments. As regards the plea of the 1st defendant, based on the principle of "either or survivor", the trial court held that the said principle cannot be imported as far as the operation of a bank locker is concerned and accordingly, decreed the suit.

3.4. Aggrieved, the 1st defendant preferred A.S.No.97/2020 before the Additional District Court - I, Ernakulam and by judgment dated 30.08.2022, the appeal was dismissed and hence, the 1st defendant is before this Court in the regular second appeal, raising the following substantial questions of law, which were framed by this Court on 27.02.2023:

i) Whether the assets deposited/kept in an "Either or Survivor" account in a bank can be bequeathed by one of the account holders by executing a will in favour of a third party without the consent of the joint account holder in view of the law laid down by the Hon'ble Supreme Court in Anumati v. Punjab National Bank [(2004) 8 SCC 498] ?

ii) Whether the tri-partite agreement entered into between the bank and two joint account holders in the case of an "Either or Survivor" account can be unilaterally modified by one of the joint account holders ignoring the tri-partite agreement and thereby the assets/amount deposited/kept in the account becomes payable to a third party on the demise of the other account holder?

iii) Whether a suit for mandatory injunction with respect to movable properties is maintainable without a prayer for declaration and possession, when the plaintiff does not have the possession of the movable properties and the title of the properties is under a cloud?

iv) Whether a decree for injunction with respect to movable properties can be granted when the description of the properties in the schedule of properties appended to the plaint is totally ambiguous and unidentifiable?

v) Whether the word Meyyabharanangal (?? ?????????) used in Ext. A2 Will would mean all ornaments which the testator had at the time of her death or only the ornaments worn on the person of the testator at the time of her death?

vi) Whether there was any evidence on record to prove that the entire ornaments kept in the locker jointly owned by the Appellant and late Smt. Sreedevi S. Kammath absolutely belonged to late Smt. Sreedevi S. Kammath alone?

4. Heard, Adv.Reji George - learned counsel appearing for the appellant, Adv.T.S.Harikumar - learned counsel appearing for the 1st respondent/plaintiff and Adv.Chetan Krishna - learned counsel appearing for the 2nd respondent -

bank, who remained neutral and submitted that, the Bank is prepared to abide by the orders passed by this Court in this appeal.

5. Adv.Reji George - learned counsel appearing for the appellant raised the following submissions:

a. Going by the principle enshrined in the decision of the Supreme Court in *Anumati v. Punjab National Bank* [(2004) 8 SCC 498], the principle of "either or survivor" clause in the agreement should entail to the benefit of the appellant and that the entire gold ornaments would automatically fall into her hands on the death of late Sreedevi S. Kammath.

b. It is further contended that, the account was operated only by the appellant and therefore, the plaintiff had no right over the same.

c. It is further contended that, despite the fact that the gold ornaments were gifted to the appellant, the appellant expressed the desire to distribute the gold ornaments among all the legal heirs of late Sreedevi S. Kammath as per the note written by late Sreedevi S. Kammath

d. The title of the plaintiff being under cloud, a mere suit for mandatory injunction will not lie, unless the plaintiff sues for declaration of title and also, recovery of possession.

e. He further pointed out that, the clause in Ext.A2 Will will not enure to the benefit of the plaintiff, because it speaks about only Meyyabharanangal, which literally means the ornaments worn by the testator at the time of her death.

f. In support of his contentions, he relied on the following decisions, *Anathula Sudhakar v. P.Buchi Reddy (DEAD) BY LRS. and Ors.* [(2008) 4 SCC 594], *Sanjay Paliwal & Anr. v. Bharat Heavy Electricals Ltd.* [2026 Supreme (SC) 67 : 2026 INSC 61], *Lalithambika v. Grievance Redressal Committee* [2023 (2) KLT 81] and *S.Santhana Lakshmi & Ors. v. D.Rajammal* [2025 SCC Online SC 2145].

6. Per contra, Adv.T.S.Harikumar - learned counsel appearing for the 1st respondent/plaintiff, countered the submissions of Adv.Reji George - learned counsel appearing for the appellant and raised the following submissions:

a. The concept of "either or survivor" clause in a joint account will not apply to the operation of a joint locker. In the present case, a locker was opened on 19.04.2013, whereas the Will was executed on 30.01.2009. Therefore, at the time of the joint account, late Sreedevi S. Kammath was quite aware of the fact that she has already bequeathed the entire gold ornaments and that be so, the 1st defendant/appellant can only be construed as the caretaker of the gold ornaments.

b. The contention of the appellant that the plaintiff should have sought for a declaration and recovery of possession cannot be sustained, inasmuch as there is no cloud on the title of the plaintiff. In the present case, though the 1st defendant had set up an absolute title over the property by virtue of a gift in her

favour, no evidence was adduced by the appellant to prove that late Sreedevi S. Kammath had gifted the gold ornaments to her. Therefore, going by the Will, there is a valid title in the favour of the plaintiff and thus, the plaintiff need not have sought for a declaration as well as recovery of possession.

c. When the Will was proved through the examination of the attesting witness, the consequences must follow. Coupled with the fact that the plaintiff has proved the execution of the Will simultaneously, the failure of the 1st defendant to have substantiated the claim of gift in her favour should necessarily lead to a presumption that the title of the plaintiff is clear.

d. He further pointed out that, along with the counter affidavit filed to I.A.No.6357/2016, the plaintiff had narrated the various list of gold ornaments in possession of late Sreedevi S. Kammath and the same matched with the inventory drawn by the Advocate Commissioner. It is further stated that there were no additional ornaments found in the locker.

e. It is further pointed out that, when the 1st defendant was cross examined, she had clearly deposed that she had opened a separate bank locker with her husband and she is keeping her personal ornaments inside the said locker. This candid admission would go a long way to disprove the claim made by the appellant.

7. I have considered the rival submissions raised across the Bar and have perused the judgments rendered by the courts below and also the records of the case.

8. In the present case, this Court is called upon to consider the question as to whether the principle of "either or survivor" will apply in a case of bank locker. The thrust of the argument made by the learned counsel for the appellant revolves around the decision of the Hon'ble Supreme Court in *Anumati v. Punjab National Bank* [(2004) 8 SCC 498], wherein the question considered was whether a fixed deposit jointly owned with an "either or survivor" clause can be pledged by one of the account holders. Deliberating on the facts of the case, the Hon'ble Supreme Court held that, after opening a joint account, one of the account holders cannot proceed to pledge the subject matter of the fixed deposit with a creditor unilaterally.

9. In the present case, what is projected is the right based on "either or survivor" principle. But does the principle hold good against a testamentary disposition or is concerned with the operational aspects of a joint account of a bank locker. No doubt the principle will apply to joint fixed deposits. But, as far as a bank locker opened in the joint names is concerned, this Court finds it difficult to accept the proposition canvassed by the learned counsel for the appellant for the reason that, at the time of opening the bank account, what is contemplated is an opening of a safe locker for the purpose of upkeeping of the goods or the chattels inside the locker. As far as the bank is concerned, it only gives the locker on rent and the liability to pay the rent is on the account

holders. The concept of the entitlement of one of the joint holders to have a right over the money, which is deposited in the joint account or fixed deposit, is entirely different and cannot be applied to the case of a bank locker.

10. It is possible that in a joint account of two persons, the goods of the third parties may also be kept inside the locker, subject to the arrangement between the persons in whose name the locker is issued by the Bank. Therefore, it will be difficult to envisage a situation where the principle of "either or survivor" is directly applied to the bank lockers opened in the names of joint account holders.

11. That apart, one must also remember that, in the present case, a registered Will is executed by late Sreedevi S. Kammath (Ext.A2), wherein she has bequeathed the ornaments in her possession. It is after execution of the Will that she has gone ahead and opened the bank locker. If the contention of the appellant is to be accepted, the contents of the Will as far as the bequest in favour of the plaintiff is concerned, will have to be obliterated by this Court and the agreement between the late Sreedevi S.Kammath, the appellant and the bank, will have to be given primacy.

12. It will be wholly impermissible for this Court to accept such a proposition of law, just because a tripartite agreement (Ext.X1) is stated to have been executed between late Sreedevi S. Kammath, the appellant and the bank, will not confer any ownership on the appellant and supersede a testamentary disposition made by late Sreedevi S Kamath.

13. Still further, when the contents of Ext.X1 agreement is examined, it is evidently clear that, after the death of any of the joint holders, the survivor is entitled to have the access to the locker for removing the contents of the locker and give the discharge to the bank without the intervention of the heirs. Clause 2 of Ext.X1 reads as under:

"It is understood that in the absence of nomination, in the event of death of any of the joint hirers the survivor/s of them shall be entitled to have access to the locker for removing the contents of the locker and give discharge to the Bank without the intervention of the heir/their legal representatives of the deceased joint hirer or to continue the hire in his/their name/s on the same terms and conditions excepting rent."

14. Read as may, this Court could not find any clause under Ext.X1 which confers an absolute title over the gold ornaments in favour of the appellant. Therefore, necessarily this Court will have to read the contents of Ext.A2 Will along with Ext.X1 agreement and Ext.X1 agreement cannot be construed as a stand alone agreement conferring absolute right in favour of the appellant.

15. Moreover, the appellant had set up an independent right over the gold ornaments by contending that late Sreedevi S. Kammath had gifted the entire gold ornaments to her. Unfortunately, the appellant failed to substantiate her plea that late Sreedevi S. Kammath had gifted the entire gold ornaments. That

apart, if, as contended by the 1st defendant, late Sreedevi S. Kammath had gifted the gold ornaments to her, there was no reason as to why she should have executed a registered Will bequeathing the gold ornaments to the plaintiff, prior to the opening of the joint bank locker account. No plausible explanation is forthcoming from the side of the appellant as regards the above inconsistency.

16. Despite these infirmities, the learned Counsel for the appellant placed reliance on the decision of a Single Bench of this Court in *Lalithambika v. Grievance Redressal Committee* [2023(2) KLT 81], wherein it was held that in a joint account between a husband and wife, on death of the husband, the wife was entitled to operate the account and no succession certificate is required for the same. This Court fails to comprehend as to how the said decision will apply to the facts of this case. When admittedly the plaintiff is armed with a registered Will, it will be futile to contend that disregarding the Will, the surviving account holder must be permitted to operate the account.

17. In *Cedric X.Pinheiro v. Smt. Josefina Remedios and Anr.* [1998 (91) Comp Cases 99 : 1997 SCC Online Bom 608], the Bombay High Court held that in a case of joint SB Account, on death of a joint holder of the account, the other surviving account holder is entitled to operate the account.

18. This decision may not also help the appellant. Unlike a joint SB account, wherein the cash deposited in the account belongs to the holders of the account, no such presumption is available to a bank locker, since the facility offered is one for safe keeping of the valuables and that law does not permit a presumption to be drawn in a case of bank locker thereby entitling the account holder to claim as a matter of right the ownership of goods stored inside the locker.

19. In *Hepzibah Annathai Rengachari v. R. Ananthalakshmi Rangachari* [AIR 1975 Madras 342], a Division Bench of the Madras High Court held that a succession certificate is not required to operate the joint account in a bank.

20. In *Mrs. Parvathy and Anr. v. Post Master General Chennai and Ors.* [AIR 2005 Madras 102], a Single Bench of the Madras High Court held that, notwithstanding a Will executed by one of the joint account holder of a monthly income deposit scheme, the surviving member is entitled to the amount under the deposit. Though, it may be possible to apply the principle in a case of joint fixed deposit or any other account as far as operation of bank lockers is concerned, this Court is unable to subscribe to this view of the Single Judge of the Madras High Court.

21. The issue could be examined from a different perspective. If one of the account holders has executed a Will or gift, bequeathing the entire articles belonging to him/her which is kept inside the locker, the surviving account holder then becomes the trustee of the articles. Perhaps understanding the nuances of the personal rights of the account holder to execute the testamentary disposition, the Reserve Bank of India issued a circular bearing No.RBI/2021-2022/86 DOR.LEG.REC/40/09.07.005/2021-22 dated August 18, 2021, permitting nomination even in a joint account for bank lockers. In para

5.2.4 and 5.3.3, it is made clear that in case one of the account holders mentions a nominee, the nominee shall be entitled to receive the goods inside the locker. Further, it is provided that on the death of one of account holders, the bank shall permit both the nominee and the survivor to remove the contents inside the locker and obtain a discharge.

22. The change in the policy formulated by the Reserve Bank of India is to be seen as a step in furtherance of the recognition of the personal rights of the account holder and is in deviation to the principle of "either or survivor".

23. Next, it is contended that, the Will does not give an absolute right to the plaintiff to claim all the gold ornaments which are inside the locker. Reliance is placed in the term "Meyyabharanangal" contained in Ext.A2 Will. Therefore, it is pointed out that, the plaintiff will not get the title over the entire gold ornaments inside the bank locker. This Court finds it difficult to accept the aforesaid argument for the reason that, if the said argument is accepted, this Court will be placing a narrow construction on Ext.A2 Will.

24. The courts, while interpreting a Will, must sit in the arms of the testator, to ascertain as to what the testator intended. It will be wholly impermissible for this Court to adopt a narrow construction which would erode into the intention of the testator and give a different perspective to the bequest made by the testator. Therefore, this Court has no hesitation to reject the aforesaid contention.

25. Lastly, it is contended that the plaintiff must have sought a declaratory relief and in the absence of a declaratory relief, the suit must fail. In support of this contention, following decisions are relied on by the learned counsel for the appellant: Anathula Sudhakar v. P.Buchi Reddy (DEAD) BY LRS. and Ors. [(2008) 4 SCC 594], S.Santhana Lakshmi & Ors. v. D.Rajammal [2025 Supreme (SC) 1781 : 2025 AIR (SC) 4931] and Sanjay Paliwal & Anr. v. Bharat Heavy Electricals Ltd. [2026 Supreme (SC) 67 : 2026 INSC 61]

26. No doubt, the Hon'ble Supreme Court had dealt in the aforecited decisions that, if there is a cloud on the title of the plaintiff, necessarily the plaintiff should seek for declaratory relief. But then, in the context of the present case, this Court finds that the decisions relied on by the learned counsel for the appellant may not apply to the present case. As far as the title of the plaintiff is concerned, this Court does not find any cloud, since the plaintiff is claiming the right based on Ext.A2 Will. On the contrary, the title of the plaintiff is disputed by the appellant by placing reliance on an oral gift given by late Sreedevi S. Kammath. Unfortunately, the quality of evidence adduced by the 1st defendant does not persuade this Court to conclude that the 1st defendant had a better title than the plaintiff. Therefore, this Court is inclined to conclude that, a mere denial of title is not sufficient to raise a cloud on the title of the plaintiff warranting a declaratory relief being sought for.

27. Coming to the findings rendered by the courts below, this Court finds that the courts below have concurrently found in favour of the plaintiff. As regards the

contention of the appellant based on an oral gift, both courts have found that the said plea cannot be sustained. The appreciation of evidence by courts below is not found to be perverse warranting interference of this Court in exercise of its powers under Section 100 of the Code of Civil Procedure, 1908. Resultantly, the findings are perfectly correct and does not suffer from any infirmity.

28. In fine, the substantial questions of law framed by this Court are answered as follows.

a] The assets deposited/kept in an "either or survivor" account in a bank can be bequeathed by one of the account holders by executing a Will in favour of a third party without the consent of the joint account holder. The decision in *Anumati v. Punjab National Bank* [(2004) 8 SCC 498] does not affect the testamentary right of one of the account holders who is the owner of the goods stored inside the locker.

b] In the present case, the tripartite agreement entered into between the bank and two joint account holders of a bank locker in the case of an "either or survivor" account does not give ownership right to the surviving account holder, hence the owner of the goods can execute a Will which will not modify the terms of the agreement.

c] When there is no cloud on the title of plaintiff over the gold ornaments, a suit for mandatory injunction with respect to movable properties is maintainable.

In the light of the above discussions, this Court is of the considered view that the other questions of law does not arise for consideration. Consequently, the judgments of the courts below are liable to be sustained. Resultantly, the appeal fails and accordingly, the same is dismissed.