

(2025) 03 KL CK 1329

In the High Court Of Kerala

Case No : Regular First Appeal No. 127, 172 Of 2010

T.C.Balakrishnan Nair (Died)

APPELLANT

Vs

Biju Ramesh

RESPONDENT

Date of Decision : 26-03-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, Order 41 Rule 1
Limitation Act, 1963 — Article 59
Limitation Act, 1963 — Section 17

Citation : (2025) 03 KL CK 1329

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : R.S.Kalkura, M.Ajay Irumpanam, Harish Gopinath, Kvp.Jayalekshmy, M.S.Kalesh, V.Vinay Menon, Indulekha Joseph, L.Mohanan, M.R.Anandakuttan, Ligeey Antony, Neeraj Narayan, V.G.Arun, R.S.Madhu, M.A.Zohra, V.Jaya Ragi, R.Harikrishnan, Mahesh Anandakuttan

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. R.F.A. No.127 of 2010 has been filed by the plaintiff in O.S. No.156/2003 on the files of the Sub Court, Neyyattinkara, under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, challenging the decree and judgment in the above case dated 28.10.2009, whereby the suit filed by the plaintiff to declare Ext.A1 sale deed No.2634/1997 executed by the plaintiff in favour of the 1st defendant, as a sham document, was dismissed. The respondents herein are defendants in the above suit.

2. R.F.A. No.172 of 2010 is also filed challenging the decree and judgment in O.S. No.156/2003, at the instance of defendants 4, 6 and 7, arraying the plaintiff and other defendants as the respondents.

3. Heard the learned counsel for the appellant, the learned counsel appearing for respondents 5 and 6 and the learned counsel appearing for additional

respondents 8 to 10 in R.F.A. No.127 of 2010. Perused the verdict under challenge and the records of the trial court.

4. Even though, service is not complete in R.F.A. No.172/2010, parties to the lis are substantially served or represented in R.F.A. No.127/2010. Hence, R.F.A. No.172/2010 can also be heard along with R.F.A. No.127/2010.

5. Parties in these appeals shall be referred with reference to their status before the trial court.

6. Short facts:- The case put up by the plaintiff before the trial court is that, the plaintiff is the owner of the plaint schedule property. When he borrowed Rs.4,00,000/-from the 1st defendant, though initially no document was executed as security, later when the 1st defendant insisted to execute documents to evidence the said transaction, Ext.A1 sale deed dated 04.08.1997 was executed by the plaintiff in favour of the 1st defendant, on understanding that, as and when the amount would be repaid with interest, the 1st defendant would execute conveyance at the cost of the plaintiff. The plaintiff's case further is that, he repaid the amount on 05.01.1999. In spite of receipt of money, the 1st defendant did not reconvey the plaint schedule properties to the plaintiff. Thereafter, on 07.10.1997, the plaintiff executed Ext.A8 settlement deed in favour of his daughter Sandhya Kumari, who is the additional 4th defendant herein and now the plaint schedule property is in possession and enjoyment of the additional 4th defendant. Therefore, the suit has been filed to declare Ext.A1 document as a sham document.

7. The 1st defendant filed written statement and resisted the suit asserting title and possession over the plaint schedule property on the strength of Ext.A1 and also on the submission that the suit is barred by limitation.

8. Defendants 2 and 3 filed written statement supporting the contentions raised by the 1st defendant. The 4th defendant also filed written statement, asserting execution of Ext.A18 Rectification deed by the plaintiff as on 05.08.2002. The 5th defendant was set ex-parte. The 6th defendant filed written statement, asserting that, at present, the plaint schedule property is in the custody of the 6th defendant. The 7th defendant filed written statement supporting the contentions raised by the plaintiff.

9. The trial court ventured the matter, after raising necessary issues. PWs 1 to 9 were examined and Exts.A1 to A21 were marked on the side of the plaintiff. DWs 1 to 10 were examined and Exts.B1 to B31 were marked on the side the the defendants. Exts.X1 to X4 were also marked as third party exhibits.

10. Finally, the trial court after evaluating the evidence, dismissed the suit holding that the suit is hopelessly barred by limitation.

11. While assailing the verdict of the trial court, the learned counsel for the plaintiff submitted that, Ext.A1 sale deed was executed by the plaintiff in favour of the 1st defendant to evidence the transaction between the plaintiff and 1st

defendant, on the condition that, when the amount would be repaid, the 1st defendant would reconvey the property to the plaintiff. Though the amount was repaid by the plaintiff, the 1st defendant did not reconvey the plaint schedule properties to the plaintiff. The learned counsel for the plaintiff submitted further that, even now tax pertaining to the plaint schedule property is being remitted by the plaintiff. Hence, the decree and judgment of the trial court would require interference.

12. Whereas, the learned counsel appearing for contesting respondents would submit that, the suit has been filed after a period of three years, though the plaintiff was having knowledge regarding execution of Ext.A1 sale deed, from the date of its execution itself. Therefore, the decree and judgment of the trial court finding that the suit is hopelessly barred by limitation does not require any interference.

13. On hearing the learned counsel for the plaintiff and the respective counsel appearing for contesting respondents, the points arise for consideration are:

1. Whether the finding of the trial court that the suit is barred by limitation is justified?
2. How limitation period to file suit to set aside or cancel a document is to be arrived at?
3. Whether the trial court went wrong in refusing the relief of declaration in respect of Ext.A1 sale deed?
4. Whether the decree and judgment of the trial court would require interference?
5. Reliefs and costs.

14. In this matter, Ext.A1 sale deed was admittedly executed by the plaintiff himself on 04.08.1997 and the suit has been filed only on 17.12.2003. The trial court after elaborately discussing the evidence, addressed the question of limitation with reference of Article 59 of the Limitation Act, 1963 and found that the suit is barred by limitation. As per Article 59 of the Limitation Act, a suit has to be instituted within a period of three years to cancel or set aside an instrument or decree, or for the rescission of a contract, and the time for which period begins to run is 'when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him'. When the executant wants to cancel or set aside a document, the executant could not contend that he has no knowledge regarding the document and he came to know about the document at a later stage from the date of execution of the document, since the executant is the best person who has knowledge of execution of the document. In such a case, the date of knowledge shall be reckoned and counted from the date of the document and not otherwise. If a non-executant of a document seeks the relief of cancellation or setting aside a document, the date of knowledge regarding the document to be found from the facts of the case to count the period of limitation.

15. In the instant case, the executant himself is seeking the relief of declaration of Ext.A1 sale deed as a sham document and the same is akin to setting aside an instrument dealt under Article 59 of the Limitation Act. Even though, Section 17 of the Limitation Act has been pointed out to bring the suit within the period of limitation, as rightly found by the trial court, Section 17 of the Limitation Act has no application in the facts of this case, since the same deals with the effect of fraud or mistake.

16. In this matter, evidently the suit has been filed after a period of three years, though the plaintiff was having knowledge regarding execution of Ext.A1 sale deed, from the date of its execution itself. Thus, the finding of the trial court that the suit is hopelessly barred by limitation is only to be confirmed and the learned counsel for the plaintiff also could not justify that the finding of the trial court that the suit is barred by limitation is wrong.

17. Now, the 1st defendant has assigned the plaint schedule property to the 5th defendant, who is also one of the daughters of the plaintiff. Thereafter, additional respondents 8 to 10 in R.F.A. No. 127/2010 purchased the plaint schedule property from the 5th defendant.

18. However, the trial court found that the suit is barred by limitation and held that the plaintiff is not entitled to get the relief of declaration of Ext.A1 sale deed as sham document. On re-appreciation of the evidence, the said decree and judgment are only to be justified. Therefore, there is no reason to interfere with the verdict of the trial court. Holding so, the trial court verdict does not require any interference.

19. In the result, R.F.A. No.127/2010 stands dismissed and the verdict under challenge stands confirmed. Though service is not complete in R.F.A. No.172/2010, the parties to the lis are substantially served or represented in R.F.A. No.127/2010. Therefore, R.F.A. No.172/2010 can also be dismissed along with R.F.A. No.127/2010, for the reasons stated herein above. Thus, R.F.A. No.172/2010 also stands dismissed. Having considered the facts of these cases, parties shall suffer their respective costs.

All interlocutory applications pending in these regular first appeals stand dismissed.