

(1995) 01 KL CK 0020
In the High Court Of Kerala
Case No : L.A.A. No. 962 of 1994

Thayambath Narayani

APPELLANT

Vs

Thumbakuthirummal Manikkam and Others

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 30, 54

Citation : (1995) 1 KLJ 226

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : K.V. Sohan, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, J.—Claimant No. 1 in L.A.R. No. 101 of 1991 is the Appellant. The dispute relates to the apportionment of Compensation due under the Land Acquisition Act. An extent of 0.0073 hectares of land comprised in R.S. 16/5B of Vellur Village was acquired for the purpose of re-alignment of N.H. No. 17. By the award, dated 24th April 1991 the Land Acquisition Officer awarded a sum of Rs. 4954.87 as compensation. Since there was dispute between the Appellant and the other claimants, the dispute was referred to the court u/s 30 of the Land Acquisition Act. The court below answered the reference overruling the claim of the Appellant in respect of a portion of the compensation. It is challenging that decision that the Appellant has approached this Court with this appeal u/s 54 of the Land Acquisition Act.

2. An extent of 2.61 acres in R.S. 16/5B belonged to one Kunhi Koran, the husband of the Appellant. The rival claimants the Respondents are the members of the thavazhi of Kunhi Koran. Kunhi Koran executed a registered Will in the year 1957. The property shown as A schedule to that Will was bequeathed to the Appellant, his wife. A portion of the entire property measuring 43 X 13 1/2 six feet koles in item No. 1 of A schedule to the Will was bequeathed to the thavazhi. The property that was acquired for the re-alignment of the National Highway was

a portion out of the 2.61 acres referred to above. The Appellant claimed the entire compensation on the basis that the bequest in favour of the thavazhi has failed in view to the fact that Kunhi Koran died in the year 1979 and the thavazhi or the tharwad stood dissolved by the Kerala Hindu Joint Family System (Abolition) Act in the year 1976 and therefore when the Will became effective there was no entity in favour of which the bequest could operate.

3. 48 cents of land which was set apart to the thavazhi or the tharwad by Kunhi Koran was the burial ground used by the tharwad. Obviously Kunhi Koran intended that the said extent should not go to his wife but should go to benefit the members of the tharwad or thavazhi. The court below therefore granted the compensation in respect of the portion acquired from the said 48 cents to the other claimants who are the members of the tharwad or thavazhi on the basis of the bequest by Kunhi Koran in favour of the tharwad or thavazhi. The learned Counsel for the Appellant submitted that there cannot be any dispute that the Kerala Hindu Joint Family System (Abolition) Act has brought about a disruption of the Marumakthayam tharwad or thavazhi and that after 1st December 1976 the existence of no tharwad or thavazhi can be postulated. He contended that Kunhi Koran having died in the year 1979 and there being no entity called the thavazhi or tharwad on that date, it must be taken that the bequest in favour of the tharwad or thavazhi by Kunhi Koran under the Will has failed. According to him a gift to an unincorporated body lapses when the body ceases to exist. A passage from Williams on Wills 5th edition page 286 is relied on. The learned Counsel also sought to derive support from the decision of the Full Bench reported in *C. Kamalamma v. Narayana Pillai* 1993 (1) KLT 174 in support of his submission.

4. The intention of Kunhi Koran in bequeathing a portion of the property to the tharwad is very clearly expressed in the Will. The members of the tharwad or the thavazhi are distinctly identifiable as against the Appellant who was bequeathed a portion of the property under the Will. The fact that a disruption has been brought about in the tharwad or the thavazhi by the Kerala Hindu Joint Family System (Abolition) Act does not lead to the extinction of the persons in whose favour the bequest has been made by Kunhi Koran. As among themselves the members of the tharwad or the thavazhi might have attained division in status by virtue of the Abolition Act. But that does not mean that the very existence of the legatees for whose benefit the bequest was made by Kunhi Koran has been wiped out. The bequest is in favour of a body of persons who were earlier probably joint tenants and certainly tenants in common. All that has happened by virtue of the Abolition Act is to make that body co-owners who will be interested in the entire lands bequeathed and deprive anyone subsequently born into that group, of a right in that property by birth. The Abolition Act does not abolish the legatees. The principle noticed in Williams on Wills relied on by the Appellant cannot have any application in the present situation. The bequest is in favour of a clearly identifiable group of persons who continue to exist with a change in status among themselves and so long as such is the case it cannot be

said that the bequest itself has failed. It must be remembered that the wishes of a testator have to be honoured as far as possible and attempt should be not to defeat the bequest but to give meaning to it. Viewed from that angle also it is possible to find that the bequest by Kunhi Koran is in favour of a group of persons who were members of his thavazhi or tharwad at the time he executed the Will and who have subsequently attained a division in status among themselves by virtue of the operation of the Kerala Hindu Joint Family System (Abolition) Act. The Act has not made the legatees cease to exist and in that view I find no justification for holding that the bequest in favour of the tharwad by Kunhi Koran has failed.

5. Once it is found that the bequest in respect of that area covered by the bequest has not lapsed, there is no dispute that the Appellant is not entitled to any share in the compensation awarded for the portion coming within the area bequeathed to the tharwad. If so, the finding of the court below that the compensation in respect of that area has to be awarded to the other claimants is perfectly justified and does not call for any interference in this appeal.

I thus find no justification for interfering with the decision of the court below. I dismiss the appeal.