

(1956) 07 KL CK 0010
In the High Court Of Kerala
Case No : Second Appeal No. 93 of 1955

Velayudhan Nair Parameswaran Nair

APPELLANT

Vs

Narayani Amma Janaki Amma

RESPONDENT

Date of Decision : 24-07-1956

Acts Referred:

Transfer of Property Act, 1882 — Section 10

Citation : (1956) 07 KL CK 0010

Hon'ble Judges : Koshi, C.J.;Nandana Menon, J

Bench : Division Bench

Advocate : P.K. Achan, for the Appellant; C.K. Sivasankara Panicker, for the Respondent

Judgement

Koshi, C.J.—This second appeal is by the Plaintiff. His suit was for a declaration that under a partition 1 arrangement evidenced by Ext. A, dated 15-3-1104, he was entitled to absolute rights over the plaint schedule property and that a provision therein that on his death it shall belong to Defendant 1 r and her children was invalid and inoperative.

A further relief asked for in the plaint was that the Plaintiff's name should be allowed to be; entered In the revenue records as the registered holder of the property. The trial court, which in this case was the court of the District Munsiff of Meenachil, gave the Plaintiff a decree as sued for by him, but on appeal before the District Court of Kottayam that decision was reversed. The learned District Judge dismissed the suit with costs. Hence this second appeal.

2. The Plaintiff and Defendant 1 are the children of one Narayani Amma. Defendant 2 is the son of Defendant 1. At the time of Ext. A Narayani Amma had three other children. By Clause 4 of the partition deed the plaint property (A schedule thereto) was allotted to the Plaintiff, Defendant 1 and her children, Defendant 2 and one Gopalan Nair, being given the property in Scher dule E.

The other sharers, Narayani Amma, and her? three other children, were parties 2

to 4 and 8 in Ext. A and their shares are mentioned respectively in Schedules B, C, D and P. Each sharer or group of sharers was to remain in possession of, the respective share allotted to him or her or the group, as the case may be and enjoy the same with full and absolute rights.

Sharers Nos. 2 to 4 and 8 were to get mutation effected for their sharers in their own names. With respect to the plaint property it was, however, provided that mutation was to be effected in the name of Defendant 1 along with the E schedule property allotted to her branch.

3. Clauses 9 and 10 of Ext. A contained further provisions with regard to the rights over and enjoyment of the plaint property. Clause 9 provided that of the rest of the properties comprised in its suit numbers has been included in Schedule E for the convenient enjoyment of the same and the building thereon, the Plaintiff should relinquish his rights over the plaint property on Defendant 1 and her children paying him a sum Rs. 300 within the period specified therein, namely, 4 years. Until then the Plaintiff was to empty the property without any powers of alienage first part of Clause 10 provided that in case Defendant 1 or her children did not avail of the privilege conferred on them by Clause 9, the Plaintiff was free to raise a sum of Rs. 300 by encumbering the property and in the event of his exercising that right he was not to have any further title to or right to the possession of the same, but, that it shall be employed by Defendant 1 and her children along with and in the same manner as the E schedule property allotted to them.

The provision in the second part of Clause 10 was that if either the event mentioned in Clause 9, or that mentioned in the first part of Clause 10, did not take place and during his life time all that the Plaintiff did with the property was to remain in possession and enjoyment of it, on his death Defendant 1 and her children will be entitled to it and that none else will have any right thereto.; It is mentioned there that it is in view of this that Clause 4 provided that mutation with respect to the plaint property should be effected in name of Defendant 1.

4. The only other relevant provision in Ext. A is that contained in Clause 14. What is stated there is that in case any of the sharers desired to sell the share allotted to him (or her) it shall be sold to whomsoever among the other sharers who offers to purchase it. Both the courts below omitted to notice this provision.

5. Either the event mentioned in Clause 9 or that mentioned in the first part of Clause 10 has not happened. We are therefore not called upon to decide what the effect of those provisions is. To our minds the second part of Clause 10 contemplates the devolution prescribed there under to make effect only in the same state as he took it under the partition arrangement, that is, without alienating it in any manner. The validity of the provision apart, Clause 14 does not permit us to understand the provision in any other light. Clause 14 applies to all the sharers its operation is not confined to sharers other than the Plaintiff. Clause 14 is the last operative part of the partition deed. Clause 4 gave each

sharer absolute rights over his or her share. So far as the Plaintiff was concerned, the absolute rights were sought to be hemmed in by the provisions in Clause 9 and 10. The event mentioned in Clause 9 or that mentioned in the first part of Clause 10 not having happened and the Plaintiff being alive and himself having brought the suit, the occasion for the play of the second part of Clause 10 has also not arisen. Consistently with the absolute rights created in all the sharers under Clause 4 and with the limited restraint on alienation contained in Clause 14, we have to hold that the Plaintiff has now absolute rights over the property.. If the absolute right created in the Plaintiff by Clause 4 is taken to be qualified by Clause 9 or the first part of Clause 10 when the qualifying clauses have not come into play the absolute right must remain intact. When the qualifying causes are not brought into action like other sharers the Defendants have only the right conferred by Clause 14 and no higher rate.

6. It can now be taken to be settled law that I such a limited restraint on alienation as that contained in Clause 14 is a valid restraint vide- AIR 1932 158 (Privy Council) "Kaliyani Amma v. Narayani Amma", 1949 TLR 116 (B), and the discussion at p. 92 of Mulla's Transfer of Property Act (3rd Edition) under note 4 to Section 10 - Heading: "Partial restraint on Transfer".

7. The foregoing discussion makes it clear that the judgment and the decree of the lower appellate court reversing the trial court's judgment and decree cannot be sustained. We accordingly allow the second appeal, set aside the lower appellate court's decision and restore the trial court's judgment and decree with costs throughout.