

HIGH COURT OF KERALA**Date of Decision: 11th January 2024****RFA NO. 207 OF 2009****APPELLANTS/DEFENDANTS NOS.2 TO 4 IN OS NO.889/2004:**

1 LEELAVATHI @ LEELA SANKAR

2 BAIJU @ K.SANKARAN

3 SHAINA SATHI @ SHAINI

**RESPONDENTS/PLAINTIFFS AND DEFENDANTS NOS.1, 5 TO 21 IN OS
NO.889/2004:**

1. CHANDRIKA

2. KARTHIAYANI

3. PADMAVATHI

4. VASUDEVAN

5. SANTHA

6. KUNJUKUTTAN RAMAN

7. KANDAKUTTY

8. BALAN

9. RADHA SIDHARTHAN

10. SULOCHANA RAJA

11. VIJAYAN

12. MALLIKA VIJAYAN

13. DR.SARASWATHI VIJAYAN

14. PRAHLADAN

15. KURUMBAKUTTY

16. VIJAYAN

17. SARALA

18. RAMANI

19. SAKUNTHALA

20. SATHEESAN

21. JALAJA

22. JISHA

23. SAJESH @ KANNAN

Legislation and Rules:

Section 144, Order XXIII Rule 1(4), Order IX Rule 9, Order XXII Rule 9 of the Code of Civil Procedure

Article 58 or 59 of the Limitation Act

Indian Succession Act

Indian Contract Act

Indian Evidence Act

Subject: The appeal challenges the trial court's decision in a suit for partition and declaration that certain documents (Exts.A2, A4, and A5) are null and void.

Headnotes:

Partition Suit Involving Property Misrepresentation – Trial court's decree of partition based on alleged misrepresentation in executing Ext.A2 Release Deed overturned – High Court found no evidence of misrepresentation – Ext.A2, A4, and A5 deeds were not nullified, leading to dismissal of the suit for partition. [Paras 11-12, 18-19]

Execution of Release Deed – Ext.A2 Release Deed, executed by Ammu, could not be unilaterally cancelled – High Court emphasized the legal requirement to set aside a deed through court if it is allegedly vitiated. [Para 11]

Limitation and Prior Litigation – Dismissal of Ammu's earlier suit (OS 1097/1993) against Ext.A2 deemed to bar the current plaintiffs from challenging Ext.A2 – Suit found to be barred by limitation and principles of res judicata. [Paras 13-14]

Challenge Against Ext.A4 and Ext.A5 – High Court found no standing for current plaintiffs to challenge these deeds related to the legal heirs of Kalyani – Plaintiffs' rights limited to Ammu's share, not Kalyani's. [Paras 15-16]

Customary and Oral Agreements – High Court disregarded defendants' claim of customary practice and oral agreements in the community as irrelevant to the case's decision – Focus remained on the validity of the release deed. [Para 17]

Decision: Appeal allowed – Trial court's judgment and decree set aside – Suit dismissed without costs. [Para 20]

Referred Cases: None..

SATHISH NINAN, J.

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R.F.A. No.207 of 2009

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Dated this the 11th day of January, 2024

J U D G M E N T

The suit for partition and for declaration that Exts.A2, A4 and A5 documents are null and void, was decreed by the trial court. Defendants 2, 3, and 4 are in appeal.

2. The plaint schedule property is, 1 acre and 59 cents. The property belonged to one Kuttan @ Ayyappan. He had two wives. In his first wife Valliamma, he had one child viz. Ammu. In his second wife Lakshmi, he had three children viz. Kunhikuttan @ Raman, Sankaran and Kalyani.

3. Ammu died on 29.10.1995. The plaintiffs are her legal heirs.

4. Kunhikuttan @ Raman was the first defendant. He died on 13.01.2007. Defendants 13 to 21 are his legal heirs.

5. Sankaran died on 08.03.1990. Defendants 2 to 4 are his wife and children.

6. Kalyani died in the year 1968. Defendants 5 to 12 are her husband and children. The fifth defendant died pending the suit and defendants 6 to 12 were recorded as the legal heirs.

7. According to the plaintiffs, on 01.07.1993 defendants 2 to 4 got executed Ext.A2 Release Deed by Ammu misrepresenting to her that it is a mortgage deed for availing loan from a Bank for agricultural purposes. Immediately on coming to know about the folly, on 06.07.1993 Ammu executed Ext.A3 cancellation deed cancelling Ext.A2. Claiming that the rights of Kalyani were released by her legal heirs to Kunjukuttan @ Raman (D1) under Ext.A4 Release Deed dated 14.10.1996, defendants 1 to 4 executed Ext.A5 Partition Deed on 12.02.01, dividing the property into two. The plaintiffs seek for partition of their $\frac{1}{4}$ shares (the share of Ammu) contending that Ext.A2 and A4 Release Deeds, and Ext.A5 Partition Deed are null and void.

8. The second defendant filed written statement denying the plaint allegations. It was contended that, the suit is not maintainable consequent on the dismissal of OS 1097/1993 filed by Ammu. The allegation that Ext.A2 document was caused to be executed by misrepresentation, was denied. It is also pleaded that the suit is barred by limitation.

9. The trial court held that Ext.A2 Release Deed was cancelled by Ext.A3 and hence Ext.A2 does not survive. Ext.A4 Release Deed was held to be not binding since all the legal heirs of late Kalyani were not parties thereto. On the finding that Ext.A2 Release Deed did not survive Ext.A3 cancellation, the plea of limitation was negated.

10. I have heard the learned counsel on either side.

11. The points that arise for consideration in this appeal are :-

(i) *Is the finding of the trial court that Ext.A2 Release Deed cease to be valid after the execution of Ext.A3 cancellation deed, correct ?*

(ii) *Is the plaint allegation that Ext.A2 Release Deed is vitiated by misrepresentation, supported by materials ?*

(iii) *Is the present suit challenging Ext.A2 Release Deed maintainable in the light of the dismissal of the earlier suit OS 1097/1993 ?*

(iv) *Was the trial court right in having granted relief against Ext.A4 Release Deed and Ext.A5 Partition Deed ?*

(v) *Is the suit barred by limitation ?*

Ext.A2 is the registered Release Deed executed by Ammu in favour of defendants 2 to 4 who are the legal heirs of Sankaran. The deed operates and affects rights over the immovable property dealt with therein on its registration. Once there has been a transfer of the rights under the release deed, it could not be annulled by the executant on the mere execution of a cancellation deed. If the document is vitiated on any grounds available under law, it is for the aggrieved to have the deed got set aside or so declared through a court of law. There could not be a unilateral cancellation. The trial court proceeded as if consequent on the execution of Ext.A3 cancellation deed, Ext.A2 Release Deed cease to have any force. The said finding is unsustainable under law. The point is answered accordingly.

12. Ext.A2 Release Deed is challenged alleging that it was misrepresented to Ammu who was an aged lady that a mortgage deed is being executed to enable defendants 2 to 4 to avail a Bank loan. It is only later that she realised that it was a release deed, is the contention. PW1 is the son of Ammu, along with whom she was residing. He was asked in cross-examination “A-½-bp-sS lq-sS c-Pn-kv-{SmÀ Hm-^o-knđ t]m-lp-t¼mÄ B-scm-sj D-ìm-bn-cpóp F-óv A-½-tbm-Sv tNm-Zn-“n-cp-tóm(Q)? tNm-Zn-“nñ (A)”. When PW1 was asked as to when he came to know about the execution of the release deed, it was not answered.

Similar is the deposition of PW2. A question was put to PW2 in cross examination as to when did Ammu realise that Ext.A2 was not in the nature as intended by her. The answer was, “two days later”. Then she was asked as to how Ammu realised that, for which the answer was that, she must have felt so. Here, the recitals in Ext.A3 cancellation deed are of significance. Therein, the reason for cancellation is stated thus :-

“ta,-Sn eoemh-Xn-bp-sS t]-cnđ ImÀjn-l hmbv-] F-Spjp-ó-Xn-\p-th-ìn Cu-Sm-bn Sn h-ll-sf F-gpXn-slm-Spjp-ó-Xn-\p th-ìn Sn h-ll-sf ta,-Sn

eo-emh-Xn-bpsSbpw aäpw t]-cnđ F-gp-Xn-X-c-W-sa-óv Sn-bm³ B-h-
iys,-Sp-lbpw Sn hmbv-] A-S-“p-Xocpó ka-bw h-l-l-fn-se A-h-Im-iw F-\n-
jv H-gn-^ap-X-cm-saópw Sn-bm³ Fsó hn-iz-kn-,n“-X-\p-k-cn-“v ta,-Sn A-
h-Im-i-H-gp-ap-dn B-[mcw F-gpXn-sIm-Sp-“n-«p-Å-Xm-lpóp. F-ómđ
A-{-Im-cw hn-iz-kn-,n“-Xv k-Xy-a-sñópw h-l-l-fnđ F-\n-jp-Å Ah-Im-iw
ssl-h-i-s,-Sp-“p-hm-\p-Å H-cp h-ô-\-bm-bncpóp A-sXópw F-\n-jv A-dn-
bp-hm³ C-S-bm-bn-cn-jpóp.”

Therefore, in Ext.A3 it is asserted that, Ammu was aware that Ext.A2 is a release deed and she was made to understand that the rights will be released back to her. Therefore, when Ammu herself had in Ext.A3 admitted that she was aware of the nature of the document, there is no force in the contention of the present plaintiffs who are the legal heirs of Ammu that Ext.A2 was got executed through misrepresentation and making Ammu believe that it was only a mortgage deed. Therefore, the challenge against Ext.A2 is bound to fail.

13. Ammu herself had filed a suit as OS 1097/1993, seeking to set aside Ext.A2 release deed. A copy of the said plaint has been marked as Ext.B1. On the death of Ammu the suit was dismissed for non-prosecution. The legal heirs-plaintiffs herein did not get themselves impleaded in the said suit and prosecute the same. As noticed, Ammu was residing with PW1 and it cannot be believed that the present plaintiffs were unaware of the said suit. This is especially so when Ammu had executed

Ext.A3 cancellation deed purporting to cancel Ext.A2. PW2 would depose that even though they came to know about OS 1097/1993, they did not enquire about the said suit. Exts.B2 and B3 are the judgment and decree in OS 1097/1993. If the dismissal is treated to be one as abated, then a fresh suit would not be maintainable under Order XXII Rule 9 of the Code of Civil Procedure.

If construed as a dismissal for non-appearance, Order IX Rule 9 of the Code of Civil Procedure bars a fresh suit. If it is treated as an abandonment of a claim, then a fresh suit is barred under Order XXIII Rule 1(4) of the Code of Civil Procedure. Therefore, viewed in any manner, the present suit is not maintainable. The point is answered accordingly.

14. Ext.A2 was executed on 01.07.1993. The suit filed by Ammu as OS 1097/1993 challenging Ext.A2 was within the period of limitation. As noticed, the suit was dismissed on 30.09.1996. The present suit is filed only on 23.09.2004 which is hopelessly barred by limitation, the period for

challenging Ext.A2 being three years from the date of the document or the date of knowledge of the document, in terms of either Article 58 or 59 of the Limitation Act.

15. As regards the relief claimed against Ext.A4 Release Deed executed by the legal heirs of Kalyani in favour of the first defendant Raman, none of the legal heirs of kalyani have chosen to challenge Ext.A4. The plaintiffs in the present suit cannot and do not claim any manner of right over the rights of Kalyani. Therefore, a challenge against Ext.A4 at the instance of the present plaintiffs could not be sustained. The point is answered as above.

16. The challenge against Ext.A2 Release Deed having been negatived, the plaintiffs have no right to challenge Ext.A5 Partition Deed entered into between defendants 1 to 4 in whom the rights over the property have become vested as the legal heirs of Kuttan @ Ayyappan and also by virtue of Exts.A2 and A4 Release Deeds.

17. Sri.K.P.Sreekumar, the learned counsel for the contesting respondents-plaintiffs would contend that, the very foundation of the defence contention is that there is a custom in the community that daughters are not given any share in the assets but they are sent away in marriage giving gold and vessels. So also, according to them, in the year 1987 there was an oral understanding to pay some amounts to Ammu and Kalyani in lieu of which they were to release their rights. The defendants claim that Ext.A2 was executed in pursuance of such custom and agreement. However, the contesting defendants have failed to prove such custom or oral arrangement. Therefore the suit is liable to be decreed, it is argued.

18. The plaintiff has come forward with a suit challenging the release deeds and claiming partition. The release deed is challenged on the ground of misrepresentation. Whether there was a custom or an oral arrangement etc. are not of relevance while deciding the plaintiff claim. Whether it be as part of custom or based on an oral arrangement, the fact remains that Ext.A2 Release Deed was executed by the predecessor of the plaintiffs. Whether Ext.A2 is vitiated by misrepresentation is the question. The challenge against Ext.A2 having been turned down supra, the suit is bound to fail.

19. The trial court failed to take note of the above aspects. As noticed earlier, the reasonings given by the trial court for decreeing the suit cannot be sustained.

20. Finally the learned counsel for the plaintiffs would submit that pursuant to the final decree passed in the suit, the decree was executed; the

same may not be unsettled at this stage. I don't think that the rights of the parties are liable to be overlooked merely for the reason that the decree was executed. Section 144 of the Code of Civil Procedure takes care of such cases.

Resultantly, this appeal is allowed. The decree and judgment of the trial court are set aside and the suit is dismissed. No costs.

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