2024 INSC 287

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPEALATE JURISDICTION

CIVIL APPEAL NO. 8616 OF 2017

KIZHAKKE VATTAKANDIYIL MADHAVAN (DEAD) THR. LRS. **...APPELLANT(S)**

VS

THIYYURKUNNATH MEETHAL JANAKI AND ORS **...RESPONDENT(S)**

J U D G M E N T

ANIRUDDHA BOSE

The present appeal arises out of a suit for partition instituted by one Thiyyer Kunnath Meethal Chandu (Chandu) claiming 8/20 shares in the suit property described in the schedule to the plaint as "Kizhake vattakkandy enha Pattayathil perulla Asarikandy pasramba, 6 feetinu ki-pa 37, the-va 35". The appellants before us were the defendants in the said suit, and are successors-in-interest of one Sankaran. The latter and Chandu are uterine brothers, both being the sons of one Chiruthey, who was married twice. Her first husband was Madhavan, within whose wedlock Sankaran was born. Madhavan passed away sometime before the

year 1910, though the exact year of death has not been specified in the pleadings nor it has appeared in evidence. After Madhavan's death, Chiruthey contracted second marriage with Neelakandan, who was the father of Chandu.

2. The suit property is situated in survey no. 56/8 in the village Eravattur in the district of Kozhikode, State of Kerala. The parties belong to Malayakamala Sect. The succession law guiding their inheritance applicable before Hindu Succession Act, 1956 that became operational was the modified form of Mitakshara law applicable to the Makkathayees. But this factor is not of much relevance for adjudication of the present appeal. Though the suit was instituted in the year 1985, to trace the source of claim of the plaintiff, one has to trace the title of the property. In the last year of the 19th Century, (i.e. 1900) as it has transpired from evidence adduced in course of the trial, the owners of the property appear to be Madhavan and he, along with his mother Nangeli had executed a deed of mortgage (Ext. B1 in the suit) on 07.05.1900 in favour of one Nadumannil Anandhan Kaimal, son of Cheriya Amma Thamburatti in relation to the subject-property. As we find from the judgment of the High Court which is assailed in this appeal, the mortgage deed itself recorded that possession of the

property was not given to the mortgagee. The plaintiff claims his share to the suit property from his mother, described in the plaint as owner of the property, Chiruthey. We must point out here that the plaintiff also had passed away during the pendency of first appeal and before us are his successors-in-interest who are representing his claim of share as the respondents. Those impleaded as defendants in the suit which was registered as OS No. 157/1985 in the Court of Munsiff Magistrate, Perambra were successors in interests of said Sankaran.

3. Apart from Exhibit B-1, three other deeds were considered by the respective fora before this appeal reached us. There is a deed marked Exhibit A-20, which is described as Kannan Kuzhikanam deed, executed on 14th July 1910 by Chiruthey, Nangeli (mother of Madhavan) and Sankaran (Chiruthey's son) in favour of Cherupula Othayoth Cheriya Amma and her son, Achuthan. On behalf of Sankaran, who was a minor at that point of time, Chiruthey executed the deed. This was in the nature of a deed of lease. Achuthan was also a minor at that point of time, and the said deed records Cheriya Amma to whom the property was being leased, for herself and her minor son.

4. On the same day i.e. 14th July 1910, a Verumpattam Kuzhikkanam deed marked as Exhibit A-1 was executed by Cherupoola Cheriya Amma for herself and for and on behalf of her minor son Achuthan in respect of the same property in favour of Chiruthey and another individual named Kuttiperavan. These appear to be back-to-back transactions. Both these deeds stipulated the term thereof to be twelve years and do not contain any renewal clause.

5. In the year 1925, by another deed executed on 22nd July 1925, described as "assignment deed" which was marked Exhibit A-2, Kuttiperavan surrendered his rights in favour of Chiruthey and Sankaran. In this deed, it has been inter-alia, recited that the executor thereof, being Kuttiperavan and Chiruthey had purchased verumpattam right over the subject-property from Cheriya Amma by fixing a rent of Rs.5/- in addition to revenue paid for the land. This deed further reads :-

> *"I hereby assigning my right over this property to you for a consideration Rs. 50 which was fixed in the presence of mediators and my share in the decree amount obtained by Cherupula Othayoth Cheriyamma from Payyoli District Munsiff Court in OS 685/ 1921 for arrears of rent together with interest and cost. My share in the said amount was given to you for payment. So I hereby assigned all my right over this property and hereby hand overing the possession of the property and also hand overing all documents with regard to the property. Hereinafter I have no right over this property…"*

6. Sankaran passed away in the year 1956 whereas Chiruthey died in the year 1966, as it appears from evidence led before the Trial Court. The foundation of the claim of the partition of the subject-property has been explained in the Trial Court's judgment in the following manner:-

> *"The plaintiffs claim over the plaint schedule property is as follows:- The property originally belonged to Chirutheyi and one Kuttiperavan as per a Verumpattam Deed No.2323/1910 from one Cheriyamma. In 1925 Kuttiperavan assigned his one half share to Chiurtheyi and her son Sankaran. Thus Chirutheyi acquired 3/4 share and Sankaran acquired 1/4 share in the property. Sankaran died in 1956 and his 1 /4 share was inherited by the defendants and the mother Chirutheyi, thus Chirutheyi acquiring 16/12 shares and the defendants acquiring 4/20 shares. Chirutheyi died in 1926 and half of her 16/20 shares would go to the plaintiff and the only remaining son, and the remaining 8/20 shares would go to the defendants, being the heirs of the other son Sankaran. Thus the shares are fixed as follows: The plaintiff 8/20. The defendants 3/20 shares each. The plaint alleges that the property never belonged to Madhavan ad alleged by the defendants in the notice."*

7. The Trial Court sustained the claim for partition and decreed in favour of the plaintiff therein whose interest is now represented before us by the respondents. The First Appellate Court by a judgment delivered on 24th June 1996, set aside the decree and dismissed the suit. The main issue before the Court, which is before us as well, is as to whether Chiruthey had any title over the subject-property which the plaintiff claimed through the series of transactions, particulars of which we have narrated in the

preceding paragraphs. The plaintiff claimed title over the property through Chiruthey who was his mother, and he was born from her second husband. The foundation of Chiruthey's title was claimed to be the registered lease deed bearing No. 2329/10 (Exhibit A-1). Kuttiperavan, who was the second lessee in "Exhibit A-1" had later released his right in the subject-property in favour of Chiruthey and Sankaran, the latter being the son of Chiruthey through her first marriage. That deed was executed on 22nd July 1925. The First Appellate Court relying on the mortgage deed dated 07th May 1900 found that it was Madhavan and his mother Nangeli who were holders of jenm right and that they were in possession of the subject-property even after execution of the mortgage deed.

8. The First Appellate Court disbelieved that the deed of 22nd July 1925 was in discharge of liability under the mortgage deed. It was also found by the First Appellate Court that Chiruthey had no authority to create a lease and such a transaction by which she sought to lease out the subject-property was not permissible in law.

9. As regards Chiruthey's right or title, it was held that she would not derive title to her deceased husband's property when she got married again to Neelakandan. The First Appellate Court

has referred to Section 2 of the Hindu Widow's Remarriage Act, 1856 ("1856 Act") which prevailed at the material point of time, when she contracted her second marriage. Section 2 of the 1856 Act reads:-

> **"2. *Rights of widow in deceased husband's property to cease on remarriage:-***
>
> *All right and interest which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died: and the next heirs of her deceased husband , or other persons entitled to the property on her death, shall thereupon succeed to the same."*

10. The First Appellate Court did not attribute much importance to Exhibit A-20 which is the first of the two deeds, which was executed in the year 1910 while referring to Section 2 of the 1856 Act. The First Appellate Court has rightly come to a finding that Chiruthey had only a reversionary right over the suit property held by her first husband Madhavan and the plaintiff (Chandu) could not claim partition right on the strength of his being a uterine brother of Sankaran born to Chiruthey after she contracted her second marriage. She lost all her rights and interests in her deceased husband's property on contracting second marriage with

Neelakandan. There is an authority on this position of law. **Velamuri Venkata Sivaprasad (Dead) by lrs. -vs- Kothuri Venkateswarlu (dead) by lrs. And Others** [(2000) 2 SCC 139], in which it has been held:-

> *"17. Section 2 of the Act of 1856, therefore, has taken away the right of the widow in the event of remarriage and the statute is very specific to the effect that the widow on remarriage would be deemed to be otherwise dead. The words "as if she had then died" (emphasis supplied) are rather significant. The legislature intended therefore that in the event of a remarriage, one loses the rights of even the limited interest in such property and after remarriage the next heirs of her deceased husband shall thereupon succeed to the same. It is thus a statutory recognition of a well-reasoned pre-existing Shastric law."*

11. The High Court in the second appeal formulated five questions of law as substantial ones, which are reproduced below:-

> "a*) Was the court below justified in holding that Exts.A1 and A20 transactions are not genuine in the absence of any pleadings and evidence to arrive at such a finding?*
>
> *b) Was the interpretation placed by the court below on Exts.A1, A2, A20, and B1 correct and proper?*
>
> *c) Was the court below justified in relying on Exts.A1 and A20, which are not the original documents on the ground that Section 90 of the Indian Evidence Act would apply?*
>
> *d) Are the defendants entitled to question the validity of the transactions covered by Exts.A1 and A20, without the same being challenged in a properly constituted suit?*
>
> *e) Was the court below justified in upholding the plea of ouster and adverse possession without any evidence on the side of the defendants to prove the same?"*

12. Thus, when Chiruthey contracted her second marriage by operation of Section 2 of the 1856 Act, she had lost title of her

share over the property of Madhavan. The High Court in the judgment under appeal, however, primarily relied on the deeds executed on 14th July 1910 to sustain the claim of Chandu (since deceased), represented by his successors-in-interest.

13. The High Court proceeded on the basis of three documents, being Exhibit B-1 dated 7th May 1900 (mortgage deed), Exhibit A-20 dated 14th July 1910 which is the deed by which Chiruthey, Nangeli and Sankaran (through Chiruthey as he was minor at that point of time) created lease-right in favour of Cherupula Othayoth Cheriya Amma and her son Achuthan and on the same date Exhibit A-1, a Verumpattam Kuzhikkanam deed was also executed in favour of Chiruthey and Kuttiperavan. Through the fourth deed, marked as Exhibit A-2, Kuttiperavan surrendered his rights in the property to Chiruthey and Sankaran. Questions were raised about admissibility of these documents before the High Court but as marking of these documents were not objected before the Trial Court, the High Court held that at the stage of second appeal, such objections could not be raised. We accept the High Court's view on this point.

14. The High Court also rejected the defendant's contention that both the deeds dated 14th July 1910 were strange transactions as

the aforesaid exhibits were not challenged by them at any point of time in the course of trial. We also do not find any flaw in the High Court's reasoning on this point also.

15. Dealing with the appellant's case that Chiruthey was divested of any right to her late first husband's property by virtue of the 1856 Act, the High Court observed:-

> *"10. Learned counsel for the respondent submitted that on Madhavan's death, which was evidently before 1910, his rights devolved on Sankaran. Chirutheyi would not get any right on Madhavan's death as per the personal law applicable to the parties. The right of a widow to hold the property was recognised by the Hindu Women's Right to Property Act, 1937. It is submitted that before 1937, Chirutheyi had re-married Neelakantan and, therefore, her right, if any, had lost by Section 2 of the Hindu Widows Re-marriage Act, 1856. The counsel relied on the decisions in Sivaprasad V. Venkateswaralu : 2000 (1) KLT SN 11(SC) and Dharmarajan V. Narayanan: 2000 (2) KLT 895. I do not think that the contention put forward by the learned counsel for the respondents deserves acceptance. This is not a case where the rights of parties are to be ascertained as if no document was executed and as if the property remained undivided. Exhibits A1 and A20 came into existence in 1910, by which the predecessor in interest of the defendants, Sankaran, and his mother, who admittedly were having rights, lost possessory title. If Ext.A20 is a valid and binding document, the question as to the rights of a widow and the extinguishment of the rights of the widow on re-marriage do not arise for consideration. As stated earlier, the defendants are not entitled to challenge the validity of Ext.A1 and A20 in defence to the suit for partition. The question whether the plaintiff has right to get a share is to be determined with reference to the documents in existence, namely, Exts.A1, A2 and A20 and not with reference to what would have been the state of affairs had no document been executed."*

16. The High Court also rejected the contention made on behalf of the appellants that they had become the owners of the suit property on the basis of adverse possession but that aspect of the matter has not been argued before us and we do not want to disturb the finding of the High Court on that issue.

17. Turning back to the three post 1900 deeds, we are not in agreement with the reasoning of the High Court in full. On remarriage of Chiruthey, after the death of Madhavan, her title or interest over the suit property stood lapsed in terms of Section 2 of the 1856 Act. Thus, Chiruthey's right to deal with property derived from Madhavan stood extinguished so far as the deed of 14th July 1910 is concerned (Exhibit A-20). But it was not Chiruthey alone who had executed that instrument, it was Nangeli and also Sankaran, (son of Chiruthey) who had executed it and remained valid legal heirs of Madhavan (since deceased). There is no conflict at least on that point. We have no material before us that Madhavan had any other legal heir. In such a situation, even if we discount Chiruthey's title over the property forming subject of lease, it stood conveyed by its actual owners i.e., Nangeli and Sankaran. To that extent, we accept the validity of the lease deed, that was otherwise proved in the Trial Court. Once we find the

Exhibit A-20 to be valid conveyance, we do not think the corollary transaction which is marked as Exhibit A-1 bearing No.2329/1910, by which the same property was leased back to Chiruthey and Kuttiperavan to be invalid. These back-to-back transactions may be unusual, but in absence of any evidence pointing to any illegality, we hold them to be valid. The High Court on finding that these deeds are valid restored the Trial Court's judgment and decree. The underlying reasoning of the High Court was that Chiruthey had legitimate right over the property. We however, find a flaw in this reasoning of the judgment of the High Court.

18. The High Court as also the Trial Court have held that since the deeds were proved, implying that Cheruthey had the right to execute the lease deed on 14th July 1910 so far as the deed of re-lease is concerned, the same might entitle her to be the beneficiary as a lessee thereof. But it would be trite to repeat that even if subsistence of a deed is proved in evidence, the title of the executing person (in this case Chiruthey) does not automatically stand confirmed. If a document seeking to convey immovable property *ex-facie* reveals that the conveyer does not have the title over the same, specific declaration that the document is invalid

would not be necessary. The Court can examine the title in the event any party to the proceeding sets up this defence. Chiruthey could not convey any property over which she did not have any right or title. Her right, if any, would stem from the second deed of lease (Exhibit A-1). We are conscious of the fact that no claim was made before any forum for invalidating the deed dated 14th July 1910 (Exhibit A-20). But in absence of proper title over the subject property, that lease deed even if she was its sole lessor would not have had been legally valid or enforceable. If right, title or interest in certain property is sought conveyed by a person by an instrument who herself does not possess any such form of entitlement on the subject being conveyed, even with a subsisting deed of conveyance on such property, the grantee on her successors-in-interest will not have legal right to enforce the right the latter may have derived from such an instrument. We, however, have not disturbed the transaction arising from Exhibit A-20 as the two legal heirs of Madhavan were also the lessors therein and to that extent, the document marked as Exhibit A-20 would not have collapsed for want of conveyable title, right or interest. What she got back by way of the document marked as Exhibit A-1 was limited right as that of a lessee and not as a

successor of her first husband Madhavan (since deceased). Moreover, this lease (Exhibit A-1) was also for a period of twelve years and the re-lease deed made in the year 1925 which is Exhibit A-2 could not operate as by that time, the entitlement of Kuttiperavan over the subject property also stood lapsed as the document marked as Exhibit A-1 also had a duration of twelve years. No evidence has been shown before us as to how Kuttiperavan, in the capacity of a lessee could exercise his right after the term of lease granted to him was over.

19. The plaintiff (now represented by his successors as respondents) sought to claim his share of suit property through Chiruthey. But as we have already explained, Chiruthey had lost her right over the subject property on her contracting second marriage. Secondly, her status over the said property, post-1910 if at all was that of lessee. There is no indication in any of the deeds that the said lease (Exhibit A-1) could travel beyond the stipulated term of twelve years. The ownership of the suit property could not be said to have devolved in any manner whatsoever to the original plaintiff, who was born within the wedlock of Chiruthey and Neelakandan. Hence, we set aside the decision of the High Court and the decision of the First Appellate Court shall stand confirmed.

20. The appeal stands allowed in the above terms and interim order, if any, shall stand dissolved. Pending applications (if any) shall stand disposed of in the above terms.

21. There shall be no order as to costs.

.....J.
(ANIRUDDHA BOSE)

.....J.
(SUDHANSHU DHULIA)

New Delhi;
April 09, 2024.