2024:KER:42300

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 12TH DAY OF JUNE 2024 / 22ND JYAISHTA, 1946

RSA NO. 421 OF 2003

AGAINST THE JUDGMENT & DECREE DATED 03.12.2002 IN AS NO.70 OF 1999 OF ADDITIONAL SUB COURT, THALASSERY ARISING OUT OF THE JUDGMENT & DECREE DATED 03.08.1999 IN OS NO.623 OF 1996 OF PRINCIPAL MUNSIFF COURT, KANNUR

APPELLANTS/RESPONDENTS/DEFENDANTS:

1 KAKKOTH RADHA
D/O. KUNHAMBU, KANNOOKKARA, KAVULLA VALAPP,
P.O. THANA, KANNUR - 12.

2 KAKKOTH LEELA
D/O. RADHA, -DO- -DO- -DO-

3 KAKKOTH SHYLAJA
D/O. RADHA, -DO- -DO- -DO-

4 KAKKOTH BALAN
S/O. KUNHAMBU, VATTAPARAMBIL HOUSE, MUNDAYAD, ELAYAVOOR AMSOM, MUNDAYAD DESOM, P.O. ELAYAVOOR, KANNUR.

BY ADV SRI.R.PARTHASARATHY

RESPONDENTS/APPELLANTS/PLAINTIFFS:

1 BATHAKKATHALAKKAL BATLAK MUSTHAFFA
S/O. AHAMMED, MUNDAYAD AMSOM, ATHIRAKAM DESOM, KANNUR.

2 KAKKOTH SATHEESHAN
S/O. KUMARAN, EKKALA HOUSE, ELAYAVOOR SOUTH,
MUNDAYAD, KANNUR DIST.

BY ADVS.
SMT.M.A.BINDU
SRI.V.R.KESAVA KAIMAL
SRI.S.VENKATASUBRAMONIA IYER SR.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOL-LOWING:

2024:KER:42300

"C.R."

JUDGMENT

This regular second appeal is directed against the judgment dated 03.12.2002 in A.S. No.70 of 1999 passed by the Subordinate Judge's Court, Thalassery. The appeal suit arose from O.S. No.623 of 1996 on the file of the Munsiff's Court, Kannur.

2. The appellants are the defendants in the suit. The respondents are the plaintiffs.

3. The plaintiffs instituted the original suit for a permanent prohibitory injunction and declaration in respect of the plaint schedule property. The trial court dismissed the suit.

4. The plaintiffs challenged the decree and judgment before the first appellate court (Subordinate Judge's Court, Thalassery). The first appellate court allowed the appeal and decreed the suit, declaring the title and possession of plaintiff No.1 over the plaint schedule property and granting a consequential injunction in his favour.

Pleadings

5. Plaintiffs pleaded the following:

Plaintiff No.2 and defendant No.1 are the grandson and daughter respectively of one late Kunhimatha. She had owned the plaint schedule property which is 21.25 cents of land and a building therein. Kunhimatha gifted out the dwelling house and 17 cents of land to her daughter Radha, defendant No.1. Radha did not act upon the gift, signifying its acceptance. Kunhimatha cancelled the gift she executed in favour of Radha and subsequently assigned the entire property to plaintiff No.2. He assigned 8 cents of land to one Mr. M.V. Balan, who later reconveyed the property. Plaintiff No.2 thereafter assigned the plaint property to plaintiff No.1, a stranger. The defendants made an attempt to trespass upon the plaint schedule property and occupy the dwelling house therein. They claim title over the plaint schedule property. Plaintiff No.1 is entitled to declaration of his title over the property and consequential reliefs.

6. Defendant No.1 pleaded the following:

Defendant No.1 is the absolute owner in possession of the plaint schedule property. Late Kunhimatha, her mother gifted 17 cents of land and the dwelling house therein in her favour on 16.09.1991. She duly accepted the gift and acted upon it during the lifetime of Kunhimatha. Kunhimatha had reserved her right to reside in the house and to take usufructs from the land during her lifetime. Plaintiff No.2, the grandson of Kunhimatha illegally created some sham documents and attempted to misuse the same with intent to trespass upon the plaint schedule property. Kunhimatha had released her right to take usufructs from the property on 04.06.1996. Defendant No.1 has, therefore, absolute right and possession over the property.

Evidence

7. Plaintiff No.2 gave evidence as PW1. PWs 2 and 3 were examined on the side of the plaintiffs and Exhibits A1 to A18 series were marked on their side. DWs 1 and 2 were

examined on the side of the defendants and Exhibits B1 to B10 were marked. Exhibits C1 to C5 were marked as court exhibits. Exhibit X1 was marked as third-party exhibit.

8. The trial court decreed the suit based on the following findings:

i. The execution of the gift deed (Exhibit B1) has been admitted by the donor and the parties to the suit.

ii. The acceptance of the gift is established based on the following circumstances:

a) The original of the gift deed (Exhibit B1) was produced by respondent No.1, the donee.

b) No circumstances were brought out to hold that the donee would have declined to accept the gift.

c) Balan, to whom plaintiff No.2 had assigned part of the property, had reconveyed the same to him, which perhaps indicated that he came to know of the illegality of the acts of plaintiff No.2.

d) Kunhimatha herself has executed Exhibit B2 deed,

releasing her entire rights in favour of defendant No.1.

9. The first appellate court reversed the decree and judgment passed by the trial court based on the following findings:

A. The production of the gift deed itself might not be sufficient to indicate the acceptance of the gift in the lifetime of the donor in the absence of evidence that the donee had come to know of the gift.

B. The mere fact that the gift is not onerous cannot lead to the presumption that the gift has been accepted by defendant No.1.

C. Exhibit B2 release deed is a suspicious document in the eye of the law.

D. Defendant No.1 had not adduced even a semblance of evidence to show that she was aware of the gift in 1991, the time when it was executed. Failure of defendant No.1 to mount the box and subject her to cross-examination is fatal to her claim. Defendant No.1 has not

effected mutation in respect of the property in her favour and paid tax.

10. After hearing both sides, this court reframed the substantial questions of law as follows:

(1) Was the lower appellate court justified in reversing the judgment and decree of the trial court on the assumption that Ext. B1 gift has not taken effect when the document itself says that possession was handed over under the document?

(2) Whether the revocation deed executed by Kunhimatha is valid in the eye of law.

(3) Has the first appellate court drawn necessary presumptions and inferences based on the pleadings and evidence?

11. I have heard Sri. R. Parthasarathy, the learned counsel appearing for the appellants and Sri.V.R. Kesavakaimal, the learned counsel appearing for the respondents.

12. The learned counsel for the appellants/defendants

made the following submissions:

I. The recitals in the deed, to the effect that the donor has given possession of the property to the donee, is an admission binding on the donor.

II. The fact that the donor has reserved right to enjoy the property during her lifetime does not affect the validity of the gift.

III. Delivery of the property is not a condition precedent for establishing acceptance of the gift.

13. The learned counsel for the respondents/plaintiffs made the following submissions:

I. Plaintiff No.1/respondent No.1 is a bona fide purchaser.

II. Defendant No.1 did not mount the box to prove her case, and therefore, an adverse inference is to be drawn against her.

III. The fact that defendant No.1 did not effect mutation and pay tax to the property would lead to the inference that she had not acted upon the gift.

IV. Mere production of the gift deed is insufficient to establish acceptance.

V. The execution of the gift has not been proved.

14. The dispute in this case essentially centers around whether the donee accepted the gift or not. I have carefully gone through Exhibit B1 gift deed. The terms in the gift deed are not onerous in nature; they are gratuitous. In Exhibit B1, the donor Kunhimatha specifically recited that she had delivered possession of the property to the donee, defendant No.1.

15. Chapter VII of the Transfer of Property Act, 1882 (for short "Act") deals with gifts. The relevant provisions are Sections 122 and 123 of the Act, which are extracted below:

> "**122. "Gift" defined**.—"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.
>
> **Acceptance when to be made**.—Such

acceptance must be made during the lifetime of the donor and while he is till capable of giving.

If the donee dies before acceptance, the gift is void.

123. Transfer how effected.—For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered."

16. As per Section 122 of the Act, the essential elements of a gift are:

a) the absence of consideration

b) the donor

c) the donee

d) the subject matter

e) the transfer

f) the acceptance.

17. As per Section 123 of the Act, the transfer of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

18. The challenge in the present case is the question of acceptance of the gift.

19. The learned counsel for the appellants/defendants submitted that even a silence may sometimes indicate acceptance, and there is no necessity to prove any overt act in respect thereof as an express acceptance is not necessary for completing the transaction of the gift. The learned counsel further submitted that the recitals in the gift deed, wherein the donor stated that she had given possession of the property to the donee, is sufficient to establish acceptance.

20. It is profitable to extract the declaration of law by the Supreme Court on the principle of acceptance of gift in **Asokan v. Lakshmikutty and Others [(2007) 13 SCC 210]**:

"14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance. [See Sanjukta Ray v. Bimelendu Mohanty AIR 1997 Orissa 131, Kamakshi Ammal v. Rajalakshmi, AIR 1995 Madras 415 and Mst. Samrathi Devi v. Parasuram Pandey, AIR 1975 Patna 140].

15. Concept of payment of consideration in whatever form is unknown in the case of a gift. It should be a voluntary one. It should not be subjected to any undue influence.

16. While determining the question as to whether delivery of possession would constitute acceptance of a gift or not, the relationship between the parties plays an important role. It is not a case that the appellant was

not aware of the recitals contained in deeds of gift. The very fact that the defendants contend that the donee was to perform certain obligations, is itself indicative of the fact that the parties were aware thereabout. Even a silence may sometime indicate acceptance. It is not necessary to prove any overt act in respect thereof as an express acceptance is not necessary for completing the transaction of gift."

21. In **Renikuntla Rajamma (D) by LRs. v. K. Sarwanamma [2014 KHC 4466 = (2014) 9 SCC 445]**, while dealing with Sections 122 and 123 of the Act, the Apex Court held thus:

"11. xxxxx xxxxx A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of Transfer of Property Act, 1882.

12. Judicial pronouncements as to the true and correct interpretation of Section 123 of the T.P. Act have for a fairly long period held that Section 123 of the Act supersedes the rule of Hindu Law if there was any making delivery of possession an essential condition for the completion of a

valid gift.

13. A full bench comprising five Hon'ble Judges of the High Court of Allahabad has in Lallu Singh v. Gur Narain and Ors. AIR 1922 All. 467 referred to several such decisions in which the provisions of Section 123 have been interpreted to be overruling the Hindu Law requirement of delivery of possession as a condition for making of a valid gift. This is evident from the following passage from the above decision where the High Court repelled in no uncertain terms the contention that Section 123 of the T.P. Act merely added one more requirement of law namely attestation and registration of a gift deed to what was already enjoined by the Hindu Law and that Section 123 did not mean that where there was a registered instrument duly signed and attested, other requirements of Hindu Law stood dispensed with:

> "7. Dr. Katju, on behalf of the appellant, has strongly contended that by Section 123 it was merely intended to add one more requirement of law, namely, that of attestation and registration, to those enjoined by the Hindu Law, and that the Section did not mean that where there was a registered document duly signed and attested, all the other requirements of Hindu Law were dispensed with. Section 123 has, however, been interpreted by all the High Courts continuously for a vary long period in the way first indicated, and there is now a uniform consensus of opinion that the effect of Section 123 is to supersede the rule of Hindu Law, if there was any, for making the delivery of possession absolutely essential for the completion of the gift. We may only

refer to a few cases for the sake of reference, Dharmodas v. Nistarini Dasi (1887) 14 Cal. 446, Ballbhadra v. Bhowani (1907) 34 Cal. 853, Alabi Koya v. Mussa Koya (1901) 24 Mad. 513, Mudhav Rao Moreshvar v. Kashi Bai (1909) 34 Bom. 287, Manbhari v. Naunidh (1881) 4 All. 40, Balmakund v. Bhagwandas (1894) 16 All. 185, and Phulchand v. Lakkhu (1903) 25 All. 358. Where the terms of a Statute or Ordinance are clear, then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment but where such is not the case, then it is our duty to accept the interpretation so often and so long put upon the Statute by the Courts, and not to disturb those decisions, vide the remarks of their Lordships decisions, of the Privy Council in the case of Tricomdas Cooverji Bhoja v. Sri Sri Gopinath Thakur AIR 1916 P.C. 182. We are, therefore, clearly of opinion that it must now be accepted that the provisions of Section 123 do away with the necessity for the delivery of possession, even if it was required by the strict Hindu Law."

14. The logic for the above view flowed from the language of Section 129 of the T.P. Act which as on the date of the decision rendered by the High Court of Allahabad used the words "save as provided by Section 129 of the Act". Section 129 of the T.P. Act was, before its amendment in the year 1929, as under:

"129. Saving of donations mortis causa and Muhammadan Law.-Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law or, save as provided by section 123, any rule of Hindu or Buddhist law".

A plain reading of the above made it manifest that the "rules of Hindu law" and "Buddhist Law" were to remain unaffected by Chapter VII except to the extent such rules were in conflict with Section 123 of the Transfer of Property Act. This clearly implied that Section 123 had an overriding effect on the rules of Hindu Law pertaining to gift including the rule that required possession of the property gifted to be given to the donee. The decisions of the High Courts referred to in the passage extracted above have consistently taken the view that Section 123 supersedes the rules of Hindu law which may have required delivery of possession as an essential condition for the completion of a gift. The correctness of that statement of law cannot be questioned. The language employed in Section 129 before its amendment was clear enough to give Section 123 an overriding effect vis-a-vis rules of Hindu Law.

15. Section 129 was amended by Act No. 20 of 1929 whereby the words "or, save as provided by Section 123, any rule of Hindu or Buddhist Law" have been deleted. Section 129 of the T.P. Act today reads as under:

> "129. Saving of donations mortis causa and Muhammadan Law – Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law."

The above leaves no doubt that the law today protects only rules of Muhammadan Law from the rigors of Chapter VII

relating to gifts. This implies that the provisions of Hindu Law and Buddhist Law saved under Section 129 (which saving did not extend to saving such rules from the provisions of Section 123 of the T.P. Act) prior to its amendment are no longer saved from the overriding effect of Chapter VII. The amendment has made the position more explicit by bringing all other rules of Hindu and Buddhist Law also under the Chapter VII and removing the protection earlier available to such rules from the operation of Chapter VII. Decisions of the High Court of Mysore in Revappa v. Madhava Rao and Anr. AIR 1960 Mysore 97 and High Court of Punjab and Haryana in Tirath v. Manmohan Singh and Ors. AIR 1981 Punjab and Haryana 174, in our opinion, correctly take the view that Section 123 supersedes the rules of Hindu Law insofar as such rules required delivery of possession to the donee.

16. The matter can be viewed from yet another angle. Section 123 of the T.P. Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word "transfer must be effected" used by Parliament in so far as immovable property is concerned. In contradiction to that requirement the second

part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or "by delivery". The difference in the two provisions lies in the fact that in so far as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property."

(emphasis added)

22. **Asokan**'s case was followed in **Daulat Singh (dead) through LRs. v. State of Rajasthan [(2021) 3 SCC 459]** wherein it was held that execution of gift deed duly registered and attested in accordance with Section 123 of the Act and acceptance of such gift makes the gift of the

immovable property complete and thereby the donor is divested of the title or interest being gifted, and the donee becomes the owner of the same. Thus, the legal position as regards the essentials of a valid gift dealt with under Sections 122 and 123 of the Act are execution, registration and acceptance by the donee during the lifetime of the donor and delivery of possession may be one mode to prove acceptance and an express acceptance is not necessary for completing the gift.

23. In the present case, as I have mentioned above, the donor has recited that she had given possession of the gifted property to the donee.

24. In **Alavi and Others v. Aminakutty Umma and Others [1984 KHC 147]**, this Court held thus:

> "It is settled law that where the deed of gift itself recites that the donor has given possession of the properties gifted to the donee, such a recital is binding on the heirs of the donor. It is an admission binding on the donor and those claiming under him. Such a recital raised a rebuttable presumption and is ordinarily sufficient to hold

that there was delivery of possession. Therefore, the burden lies on those who allege or claim the contrary to prove affirmatively that in spite of the recitals in the gift deed to the effect that possession has been delivered over, in fact, the subject matter of the gift was not delivered over to the donees."

25. **Alavi** (supra) was followed by this Court in **Parameswaran and Others v. Lekshman and Others [2013 (1) KHC 503]**. In **Parameswaran** (supra), this Court held that the very averment made in the gift deed that absolute possession was handed over to the donee subject to the right of residence of the donor would sufficiently indicate proof of acceptance thereof by the donee.

26. The learned counsel for the respondents/plaintiffs contended that the production of Exhibit B1 by the appellants/ defendants is insufficient to establish acceptance as she did not mount the box and tender evidence to support her plea that she had accepted the gift. The learned counsel has taken me to the reverse of the 1st page of Exhibit B1 wherein it is endorsed

that the document was returned to the first identifying witness. It is submitted by the learned counsel for the plaintiffs that this fact, coupled with the fact that Kunhimatha continued to pay land tax and reserved right of the property, would indicate that defendant No.1 had not accepted the gift.

27. In **Renikuntla Rajamma** (supra), the Apex Court observed that the fact that the donor had reserved the right to enjoy the property during her lifetime does not affect the validity of the gift deed, and the gift deed was perfectly valid.

28. It is trite that no particular mode is prescribed under the law as to the requirement needed to prove acceptance. There may be various means to prove acceptance of a gift. The document may be handed over to the donee, which in a given situation also amounts to a valid acceptance. The fact that the mutation was not effected immediately after the execution of the gift deed in favour of defendant No.1 does not have much significance.

29. This Court in **Kuttian Padmini v.**

Nelliyullaparambath Mathu and Others [2014 (1) KHC 759], held that the fact that the mutation of the property under a gift deed in the name of the donee has not been effected in the revenue records cannot be given much significance considering her relationship with donor, her mother, in whose favour life interest for enjoyment of the property was reserved under the gift. This Court further held that when life interest is reserved with the donor with an obligation on her part to pay the revenue charges over the property the fact that she continued in possession, improved the property and paid revenue charges cannot be viewed as circumstances to hold that there was no acceptance of the gift by donee.

30. Yet another fact that requires consideration is that, as per Exhibit B2, the donor had executed a deed in favour of Radha, releasing her entire right over the property wherein she had acknowledged the acceptance of the gift and possession of the property by the defendant No.1.

31. The recitals in Exhibit B1 gift deed and Exhibit B2 release deed, two registered documents wherein the donor specifically acknowledged that the donee accepted the gift and possession of the property was delivered to the donee, are sufficient to establish acceptance. Therefore, the argument of the learned counsel for the respondents/plaintiffs that defendant No.1 did not mount the box to give evidence on the acceptance has no significance. Therefore, the findings recorded by the first appellate court on the question of acceptance suffer from the vice of perversity. I am of the considered view that the first appellate court has not drawn necessary inferences and presumptions based on the pleadings and evidence.

32. The learned counsel for the respondents/plaintiffs relied on Exhibits A9 and A10 cancellation deeds in support of the claim of title by plaintiff No.1.

33. The question of whether a unilateral cancellation/ revocation of a gift deed is legally permissible or not is dealt

with in Section 126 of the Act, which reads thus:

> "126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.
>
> A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.
>
> Save as aforesaid, a gift cannot be revoked.
>
> Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

34. In **Thota Ganga Laxmi v. Government of Andhra Pradesh [2011 KHC 827 = (2010) 15 SCC 207]**, the Apex Court considered the legality of a cancellation deed whereby a sale deed was cancelled. The Supreme Court in paragraph 4 of the judgment observed thus:

> "In our opinion, there was no deed for the appellants to approach the civil court as the said

> cancellation deed dated 04.08.2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law."

35. In **Suresh Babu S.R. and Others v. Beena and Another [2022 (2) KHC 628]**, a Single Bench of this Court held that in the absence of any right for revocation of the deed in the deed itself, unilateral execution of the cancellation deed to cancel the gift deed is bad in law and is legally unsustainable.

36. On the question of unilateral cancellation/revocation, this Court in **E.A. Pavithran and Others v. Erayi Arakkalath Neetha and Others [2023 KHC 704]** held

thus:

> "19. Summarizing the question how far unilateral cancellation/revocation of a gift deed, is legally permissible, it has to be held that unilateral cancellation/revocation of a gift deed, which is complete, is not legally permissible and such cancellation/revocation is void. The exemptions are the contingencies dealt under Section 126 of the TP Act; which are as under:-
> i. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked;
> ii. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded."

37. The learned counsel for the plaintiffs has also raised a contention that defendant No.1 had not proved the execution of the gift as provided in Section 68 of the Evidence Act. The parties admitted execution of Exhibit B1 gift. The donor also admitted the execution of the gift as per Exhibits A9 and A10. Once there is an admission of the gift by the parties in the proceedings and the donor herself, I do not think that the

defendants had to give evidence in proof of the execution of the gift deed, which never had been a disputed question anywhere during the proceedings.

38. The substantial questions of law are answered accordingly in favour of the appellants/defendants. The judgment and decree dated 03.12.2002 passed by the Subordinate Judge's Court, Thalassery in A.S. No.70 of 1999 stand set aside. The judgment and decree dated 03.08.1999 in O.S. No. 623 of 1996 of the Munsiff's Court, Kannur, stand restored.

The regular second appeal is allowed as above.

Sd/-

K. Babu
Judge

vpv