

In the High Court of Judicature of Travancore-Cochin
at Ernakulam.

Present

X The Hon'ble Justice Shri K. Sankaran
and
The Hon'ble Justice Shri M. S. Menon.

A.S. No. 40 of 1954.

O.S.No.54/1182 on the file of the Quilon District Court.

Appellant: (Addl.Defendants 29 & 30).

1. Karthiyayani Amma Jansaki Amma of Mavuvila Veedu, Puzhukkannoor Cherry, Kottamkara Pakuthy, Quilon.
2. Kunjan Pillai Bhaskaran Pillai of do.

By Advocate ~~Shri~~ General Shri Mathew Muricken and
Advocate Shri V.Subramanian Moothathu.

Respondent. (Plaintiff).

Usanaru Mytheen Kunju of Kottavilathekkukuzhivila Veedu, Puzhukkannoor Cherry, Kottamkara Pakuthy.

By Advocate Shri N.Varadaraja Iyengar.

This appeal having been finally heard on 20.12.1954 the court on the same day delivered the following

Judgment.

Defendants 29 and 30 who are the heirs of the 1st defendant are the appellants. Plaintiff's suit is to be reimbursed of the debt due under Ext.A decree which was satisfied by the execution of the sale ^{deed} Ext.B decree in favour of defendants 9 to 24 who are the heirs of the decree-holder in Ext.A. The properties covered by Sy.Nos.850 and 826 were the items charged under Ext.A decree. Of these items the property covered by Sy.No.826 was left out from Ext.B sale deed but Sy.No.850 was included in that sale deed. The result was that Sy.No.826 was exonerated from liability under Ext.A decree and the liability was fastened on Sy.No.850. This item along with other properties was purchased by the present plaintiff under Ext.C and it was while he was in possession of Sy.No.850 that the present appellants took delivery of the property on the strength of Ext.D court sale in O.S.445 of 1107. That court sale was expressly subject to the

liability for the prior charge under Ext.A decree. Plaintiff's predecessor-in-interest had paid off this charge by the execution of the sale deed Ext.B and plaintiff has sought to enforce his prior charge to that extent. The first defendant or his legal representatives cannot resist this claim, because the sale certificate Ext.D has expressly reserved this prior charge. That charge could be enforced against both the items jointly and severally as per the terms of Ext.A decree. The purchaser under Ext.D sale certificate cannot therefore disown liability for that amount so far as Sy.No.850 is concerned. The lower court was therefore right in decreeing the claim put forward on the basis of Ext.A. The defence contention was that the liability was only to the extent of 13,300 fanams. The lower court upheld this contention and plaintiff was given a decree only for this amount. We see no reason to interfere with that decree.

2. The result is that this appeal is dismissed with costs.

20th December 1954.

(Sd) K.Sankaran, Judge.

(True copy) (Sd) H.S. Menon, Judge.

imposed by

Deputy

Registrar

Deputy
Asst. Registrar,
for Registrar.