

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Honourable Mr. Justice P.K. Balasubramanyan  
Friday the 17th day of June 1994/ 27th Jyastha 1916 S.E.

R.P..135/87 in S.A.12/80C

O.S.No.123/72, Sub Court, Quilon

A.S.No.187,191 and 197 of 1977, District Court, Quilon

Petitioner - 6th Respondent in S.A.

Padmarabhan Bhaskaran, Marailasseril  
Thoppil Veedu, Kannimel Cherry,  
Quilon Village.

Vs.

Respondents - Appellant & Respondents 1 to 5 &  
7 to 11 in S.A.

1. Paramu Sajatha, Komantazhikathu Veedu,  
Kannimel Cherry, Quilon.
2. Kunjuraman Thulaseedharan, Thulasimandiram,  
Prakkulathucherry, Thrikkaruva Village.
3. Kunjuraman Thankappan, -do- -do-
4. Marayani Savithri of -do- -do-
5. Krishnan Kesavan Mangalasseril, Kayavakkathu  
Veedu, Prakkulathu Cherry, Thrikkaruva  
Village.
6. Krishnan Madhavan, Thevarazhikathu Kizhakkethil,  
-do- Cherry, -do-
7. Padmarabhan Padmavathy, Komangazhikath  
Veedu, Kannimel Cherry, Quilon Village.
8. Velayudhan Paramu, -do- -do-
9. Paramu Vijayan of Komantazhikathu Veedu,  
Kannimel Cherry, Quilon Village.
10. Paramu Geetha, of -do- -do-
11. Paramu Saboo of -do- -do-

Petition praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to review the judgment in the above Second Appeal dated 17.12.1985 and allow the petitioner to place all the facts and circumstances of the case in the interest of justice.

This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof, and upon hearing the arguments of Mr. M.V.Thamban, Advocate for the petitioner, and Mr. M.A.T. Pal for R1 the Court passed the following:-

p.t.o

P.K. Balasubramanyan, J.

R.P. No. 135 of 1987 in  
S.A. No. 12 of 1980.

Order

This petition for review is filed out of time. C.M.P. No. 18709 of 1987 is filed by the petitioner for condoning the delay in filing this Review Petition has been dismissed by me today for non-prosecution. In view of this, this Review Petition has only to be dismissed as barred by limitation. The Review Petition is dismissed.

17th June, 1994.

sd/-  
(P.K. Balasubramanyan, Judge)

(True Copy)

7-7-94  
Assistant Registrar.

6-7-94

IN THE HIGH COURT OF KERALA AT ERNAKULAM

P R E S E N T:

The Honourable Kumari Justice M. Fathima Beevi

Tuesday the 17th December, 1985/26th Aashadham, 1907.

S.A.No. 12 of 1980

A.S.Nos. 187, 191 and 197 of 1977 of the District Court, Quilon.

A.S.No.123 of 1972 of the Sub Court, Quilon.

Appellant - first plaintiff - 1st respondent in A.S.Nos.187, 191 and 197 of 1977.

Paramu Sujatha, Komantazhikattu veeedu, Kannimel Cherry, Quilon Village.

By Adv. Sri. Thayyil K.Vasudevan.

Respondents - appellants - plaintiffs 2 to 4 and defendants.

1. Kunjuraman Thulasiedharan, Thulasisandiran, Prakkulathucherry, Thrikkarava Village.

2. Kunjuraman Thankuppen do. do.

3. Narayana Savithri of do. do.

4. Krishnan Kesava Mangalasseril, Kayavakkattu veeedu, Prakkulathu cherry, Thrikkarava Village.

5. Krishnan Madhavan, Thevarazhikattu Kizhakkethil do. cherry do.

6. Padmanabhan Bhaskaran, Marailasseril Thoppil Veeedu, Kannimel Cherry, Quilon Village.

7. Padmanabhan Padmayakku Komantazhikattu Veeedu, Kannimel Cherry, Quilon Village.

8. Velayudhan Paramu do. do.

9. Paramu Vijayan of Komantazhikattu veeedu Kannimel Cherry, Quilon Village.

10. Paramu Geetha of do. do.

11. Paramu Subeo of do. do.

By Advs. M/s. P.C.Chacko, P.Krishnamoorthy & M.Krishnan Nair.

This second appeal having been heard on 6.12.1985, the court on 17.12.1985 delivered the following:

the prescribed period of limitation. The mere fact that

defendants 6 to 10 had been impleaded in the course of the

suit will not alter the position as the relief prayed for is

to <sup>set aside</sup> ~~effect~~ the sale deeds executed in favour of defendants

1 to 5 <sup>with</sup> or them at the party array. It is not open to

defendants 6 to 10 who claim subsidiary rights to put forward

the plea of limitation. The sale deeds have been declared

to be void and the plea is therefore untenable. In any

view of the matter the decree of the trial court has only

to be upheld.

In the result the appeal is allowed. The decree of

the lower appellate court is set aside and that of the

trial court is restored. The parties are directed to

suffer the costs in the appeal.

17th December, 1935.

Sd/-M. Pathima Beovi, Judge.

// true copy //

  
Assistant Registrar.

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5/2/36



upon the court to take notice of the events which have happened since the institution of the suit to mould its decree according to circumstances as they stand at the time when the decree is made. The court is therefore bound to consider the effect of the <sup>legislation</sup> registration and in order to shorten the litigation and to do complete justice between the parties mould the reliefs that can be granted. When the plaintiffs had thus by operation of law become co-owners of the property, the right to recover the property is not lost altogether. By allowing them to recover the share which they would be entitled to if a partition had taken place, being a relief which can be granted without any prejudice to the parties, should be granted in view of the changed circumstances. The alienees has no right to claim share of the vendor and therefore has no right to resist any such direction to recover his specific share in terms of the Act. Raghavan v. Arayappan Pillai (1979 K.L.T.15) the effect of Act 30 of 1976 in pending litigation was considered. It was held thus:-

"There is nothing in the Act to suggest that its operation is projected backwards to take away rights which accrued in the past. 3.4 shows that, as from the date on which the Act came into force, a joint tenancy



came into force on 1-12-1976 only provides that on and after the commencement of the Act, no right to claim any interest in any property of an ancestor during his or her life-time which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any court. Under Section 4 of the Act all members of a joint family holding any joint family property shall with effect from the date of commencement of the Act be deemed to hold it as tenants-in-common as if a partition ~~has taken place~~ of such property per capita has taken place among all the members of the family and as if each one of the members is holding his or her share separately as full owner thereof. There is a statutory disruption of the joint family and thereafter each member shall be entitled to hold the property as a co-owner. The Act is not retrospective in operation. Ordinarily the decree in a suit is granted with the rights of the parties as they stand at the date of its institution. But where it is shown that the original relief claimed has by reason of subsequent change of circumstances become inappropriate or that it is necessary to have the decision of the court on the altered circumstances in order to shorten the litigation or to do complete justice between the parties, it is incumbent

of 1976 and has therefore passed a preliminary decree declaring the <sup>plaintiffs'</sup> ~~plaintiffs'~~ right for 4/5 shares and allowing them to recover that share with consequential reliefs. The lower appellate court has taken the view that such a relief cannot be granted without an amendment of the ~~plaintiff~~ <sup>plaintiffs'</sup> suit, and that to pass a preliminary decree for partition in a suit of this nature is a fatal error. The court also said that the plaintiff cannot bring a suit on behalf of the thavazul which has become extinct by the operation of law. The court also said that to amend the suit at this stage for that purpose is an abuse of the process of the court because the plaintiffs had ample opportunities after the passing of the Joint Family System Abolition Act of 1976. In this view the suit was held to be not maintainable.

5. The appellant has urged that the lower appellate court in thus holding the suit as not maintainable has erred grievously. It has been found that the two sale deeds executed in respect of the plaint items are invalid and the plaintiffs are entitled to recover possession of the property on avoiding the improper alienations. Recovery has been sought for on behalf of the tharavad ~~as~~ on the date of the suit, that claim was maintainable. Act 30 of 1970 which



M. Fathima Beevi, J.

S.A.No. 12 of 1990-C. (Pauper)

J U D I C I A L

The 1st plaintiff is the appellant. The suit was instituted by plaintiffs 1 to 4 for recovery of the suit properties after setting aside certain alienations. Plaintiffs 1 to 4, the children of defendants 4 and 2 challenged the validity of Exts. A4 and A2 <sup>sale</sup> ~~will deeds~~ as not supported by <sup>necessity</sup> ~~consideration and therewith interest~~. The trial court decreed the suit setting aside the sale deeds and allowing the plaintiffs to recover possession. <sup>of their share after division</sup> In the appeal filed by defendants 1 to 3 the <sup>preliminary</sup> ~~decree~~ of the trial court was set aside and the suit was dismissed. The appellate decree is challenged by the 1st plaintiff in this Second Appeal.

2. The controversy is now limited to schedule item 1 and 20 cents in item No.3. The dispute in respect of item No.2 had been compromised during the pendency of the suit. The finding of the trial court that the sale deeds are invalid has been confirmed by the lower appellate court. The trial court in granting the decree has noticed the effect of Act 50