

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 30TH JULY 2010 / 8TH SRAVANA 1932

AS.No. 851 of 1998(K)

OS.174/1989 of III ADDL.SUB COURT, KOZHIKODE

APPELLANT(S): PLAINTIFFS

1. K.CHIRUTHA, W/O. DAMODARAN NAIR,
KOLAMTHODIKAYIL POOLAKODE AMSOM,
ERIMALA DESOM, KOZHIKODE.
2. CHILDREN, KUNNUMMEL THANKAM,
D/O. DAMODHARAN NAIR, RESIDING WITH
1ST PLAINTIFF AT KOLAMTHODIKAYIL,
POOLAKODE AMSOM, ERIMALA DESOM,
KOZHIKODE.
3. KUNNUMMEL PADMINI,
D/O. DAMODARAN NAIR,
RESIDING AT DO. DO.

BY SRI.A.P.CHANDRASEKHARAN, SENIOR ADVOCATE
BY ADVS. SMT.PRABHA R.MENON
SRI.KODOTH PUSHPARAJAN

RESPONDENT(S): (DEFENDANTS) NAMES SHOWN IN DECREE IN OS. 174/1989 IS

WRONG.)

1. N.P.JANAKI AMMA, D/O. UNNICHIRA AMMA
RESIDING AT CHEMPOKOTTU POYIL,
POOLAKODE AMSOM, ERIMALA DESOM,
KOZHIKODE TALUK.
2. CHEMPAKOTTU POYIL CHANDRAMATHIL,
D/O. DAMODARAN NAIR,
RESIDING AT VILANHERI, IRRINGALLUR AMSOM,
PALAZHI DESOM, KOZHIKODE.
3. C.P.VASANTHA AMMA,
D/O. DAMODARAN NAIR, RESIDING AT
CHEMPAKOTTU POYIL, POOLAKODE AMSOM,
ERIMALA DESOM, KOZHIKODE TALUK.

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4. CHEMPAKOTTU GOPINATHAN NAIR,
S/O. DAMODARAN NAIR, RESIDING AT
POOLAKODE AMSOM, ERIMALA DESOM,
KOZHIKODE TALUK.
5. LOHITHAKSHAN NAIR,
S/O. KOLAMTHODIKAYIL SARADA,
RESIDING AT POOLAKODE AMSOM,
ERIMALA DESOM, KOZHIKODE TALUK.

**R1 BY SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE
R1 BY ADV. SRI.SUNNY MATHEW**

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 30/07/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

M.N. KRISHNAN, J.

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A.S. No. 851 OF 1998

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DATED THIS, THE 30TH DAY OF JULY, 2010.

JUDGMENT

This is an appeal preferred against the judgment and decree of the Subordinate Judge, Kozhikode, in O.S. 174 of 1989. The suit is one for partition. The court below found that the first plaintiff has not succeeded in proving that she had been married by one Damodaran Nair and that plaintiffs 2 and 3 are the children borne to her through Damodaran Nair and therefore, it dismissed the suit. It is against that decision, the plaintiffs have come up in appeal.

2. Heard. The brief facts necessary for the disposal of the appeal are stated as follows: It is the case of the first plaintiff that she was married by Damodaran Nair about 40 years back and that plaintiffs 2 and 3 are the children born to her through him. On the contra, the defendants would contend that the first defendant is the legitimate wife and the other defendants are the children of Damodaran Nair in the first defendant. A large number of documents were placed before the court for consideration. I may have to state that the learned Subordinate Judge had taken the pains to analyze meticulously each and every document produced by the parties. The first plaintiff, as PW.1, would depose before the court that she does not

remember the year and date of marriage; but it was performed in the month of Makaram (Malayalam month). According to her, Damodaran Nair's father Govindan Nair, his uncle Velayudhan Nair and other brothers came to her house for fixing the alliance and the marriage took place by exchange of garlands and that Damodaran Nair presented cloth to her and they held their hands together and encircled a lighted lamp three times. According to her, they lived together as husband and wife for 28 years. PW.2 is the daughter of PW.1 and she had also deposed that the said Damodaran Nair is her father. Now, the documents relied upon by the plaintiffs are mainly, Ext.A13, a solitary money order coupon alleged to be sent by Damodaran Nair, Exts.A14 to A18, the voters list and the electoral card where the name of the first plaintiff and her daughters are seen with a suffix of Damodaran Nair. PW.3 is a close relative of PW.1. He would also depose that he had participated in the marriage. PW.4 is the sister of PW.1 and she also supported the case of the plaintiff. PW.5 is the brother of the first defendant. He had not supported the case of marriage; but he was examined to prove a cancellation of a marriage contract. PW.6 is a 80 year old uncle of Damodaran Nair, who would also support the case of the plaintiffs. The other documents are Exts.A21 to A23, which are photographs and letters.

3. On the contra, the case of the first defendant is that she was married by Damodaran Nair on 2.5.1953 and intimation was given to the Taluk Office. She also speaks about the custom of exchange of garlands, encircling of the lamp etc. Damodaran Nair joined military service in 1966. DW.2 also speaks about the marriage and intimation to the Taluk Office. Ext. B1 is the group photo of Damodaran Nair and Janaki amma, the first defendant, which he had taken for the purpose of family pension. Ext. B3 is an extract of the entry in the marriage register showing that Damodaran Nair had married the first defendant. Exts. B4 and B5 are the horoscopes, Ext. B6 series are letters received by the first defendant from Damodaran Nair and Ext. B7 series are 75 money order coupons. The court below clearly opined that though it does not mention the name of Damodaran Nair, these reveal that they are sent from the Army Post Office. Further, it has come out in evidence that Damodaran Nair and his brothers were on logger heads and there had been misunderstanding among them. The title deeds of the properties - Exts. B11 to B17 and B29 basic tax receipts are also produced by the defendants in this case. The voters list also show that Janaki amma is the wife of Damodaran Nair and defendants 2 to 5 are the children. Damodaran Nair died while in service and the intimation of death was received by telegram by the first defendant. The Commanding Officer

also had sent a condolence letter. Ext. B25 would reveal that family pension is received by Janaki amma and other documents are also relating to the same. It has to be stated that the documents produced by the defendants, especially, Ext.B3 coupled with the other documents explicitly would reveal that Damodaran Nair had married the first defendant and that the other defendants are born in that wedlock.

4. So far as the plaintiffs are concerned, it is true that there is some evidence to show that Damodaran Nair had connection with the first plaintiff. It is very difficult to believe in a society that about 40 years back members of a Nair family had visited the house of an Ezhava family and had arranged a marriage. It is very interesting to note that the school admission documents would reveal that one Chekkutty is shown as the father of the second plaintiff and one Raman is shown as the father of the third plaintiff. The name of Damodaran Nair does not find a place at all in the school admission registers. There was an argument before the court below that there is some difference with respect to the dates so far as it relates to the defendants are concerned. Relating to date of birth, school admission register may not be totally reliable; but by no stretch of imagination persons will go on giving different names as fathers of the

children. It is in that background, the trial court held that there was a practice among that community that two sisters used to marry one person. The court below explained it and said that one of the sister's husband is known by the name Chekkutty and the father of the second plaintiff is shown as Chekkutty may be on account of the fact that two sisters did have the same person as husband. It is also interesting to note that a document was produced as Ext.A19 to show that there was a cancellation of the marriage between the first plaintiff and Damodaran Nair, in 1960, which is not admitted by the plaintiff. It is also stated that there was a registration of the marriage. But the said document is not forthcoming also. It has come out from evidence that the brothers of Damodaran Nair were in rapport with the plaintiffs and therefore, they had joined hands with the plaintiffs to institute a suit of this nature.

5. So, the following factors would reveal that the plaintiffs' case cannot be true. The very fact that the first defendant's marriage had been duly intimated to the Taluk Office as per the then existing law coupled with the evidence and the subsequent conduct of Damodaran Nair would show that he had considered the first defendant as his legally wedded wife and defendants 2 to 5 as his children. He belongs to Nair community and the first plaintiff belongs to another community. The system of arranged

marriage between two different communities was not in common at that point of time ie. forty years back. Then the factum that the name of fathers shown in the document in the school would show that Damodaran Nair was never shown as the father of the children. The long protracted communications would also show that Damodaran Nair was sending money orders to the first defendant and also sending letters to her and the military department where he was in service had recognized the first defendant as his wife and had sanctioned family pension as well. At the most, the evidence on the plaintiffs' side would show that Damodaran Nair had some connection with the first plaintiff. Therefore, the marriage is not proved. Any form of marriage, when not proved, certainly will not entitle the children, even if it is proved to be that of Damodaran Nair, to inherit the property under Section 16 of the Hindu Marriage Act, because the law always favours confronting paternity and dissuades bastardization. Here, the documents speaks in volume about the inconsistent stand taken by the plaintiffs and it has to be stated that the learned trial judge, after exhaustive consideration of the entire materials, had arrived at a finding that the first plaintiff is not the wife and there was no marriage with Damodaran Nair and it is not proved that the second and third plaintiffs are the children born to Damodaran Nair in the first plaintiff.

6. Therefore, when it is so, in the personal property of Damodaran Nair only his wife and children, who are legitimately married and begotten, are entitled to have right. So the plaintiffs are not entitled to any right in the property of Damodran Nair. There is nothing to be interfered with the decision rendered by the trial court. Therefore, the appeal fails. It is dismissed.

M.N. KRISHNAN,
(JUDGE)

KNC/-

M.N. KRISHNAN, J.

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A.S. No. 851 OF 1998

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DATED : 30TH JULY, 2010.

JUDGMENT