

IN THE COURT OF THE SUBORDINATE JUDGE, CHERTHALA**Present:- Smt. Priyachand P.P., MA., LLB., Sub Judge****Saturday 18th June 2016/28th Jyaishta 1938****A.S. No.33/2009**

Filed on 26.02.2009

Appellants/Plaintiffs:-

1. Anirudhan, S/o Velayudhan,
Padannayil, Eramallor Muri,
Ezhupunna Village.
2. M.V Asokan @ Asokumar S/o Velayudhan,
Parthas Bhavan, Eramallor Muri, Ezhupunna Village.
3. Swaminadhan S/o Velayudhan,
Sarathi Nivas, Eramallor Muri, Ezhupunna Village.
4. Susheela(died), W/o Babu,
Thekkinezhath House,
Panagad P.O Kumbalam, Cochin Corporation.
5. Leela W/o Mohanan,
Krishna Vilasathu house,
Eramallor Muri Ezhupunna Village.
6. Krishnakumar, S/o Mohanan,
Krishna Vilasathu of -do-
7. Sambhunathan of -do-
8. Rohini @ Resmi
Kumara Bhavanam, Eramallor Muri,
Ezhupunna Village.

9. Abhayachandran,S/o Gangadharan
Padannayil ,Eramalloor muri,
Ezhupunna Village.
10. Rajeev of -do-
11. Vinovin of -do-
12. Sujatha W/o Gangadharan (Late) of -do-

Additional Appellants.

13. Sreedevi Santhosh,D/o Suseela,
Ereapadath house, Vadakkathara Road,
Poonithura P.O., Petta.
14. Krishnakumar,S/o Suseela,
Thekkinezhath House,
Panangad P.O., Cochi.
15. Sree Lekshmi Rajesh, D/o Suseela,
Vallurakathottuhouse,
Panangadu P.O., Cochi.

Addl appellants 13 to 15 are impleaded as per order dated 24.02.2015 in IA 97/15.

By Adv.Sri.C.J.Varghese

Respondents/Defendants:-

1. Ajayan S/o Gangadharan,
Moonnumthenguthara Uzhuva muri,
Pattanakkad Village.
2. Usha of do -do -
3. Sindhu of -do-
4. Gowri W/o Padmanabhan,
Thuruthel House, Olathalabhagom,

Uzhuva muri, Vayalar East Village.

5. Pavithran S/o Gowri of -do-
6. Lekshmi W/o Govindan (Late)
Kizhakkedathu Nikarthil, Eramlloor Muri,
Ezhupunna Village.
7. Raveendran S/o Govindan of -do-
8. Lalitha W/o Asokan, Aiswarya, ward No IV,
Panavally Panchayath,
Odampally Bhagom, Cherthala.
9. G.Pushpavally W/o C.K Soman,
Chathothu house Naduvathunagar P.O,
Thuruthi bhagom.
10. Dileep S/o Govindan
Keezhathu Nikarthil from Padannayil,
Eramalloor muri cherthala.
11. Sunil Kumar of -do-
12. Gangadharan,
Moonuthengumthara, Uzhuva Muri,
Pattanakkad Village.
R1 to 5 and 12 Exparte
R6 to 11 by Adv.Smt.Geetha.S.Nair

This appeal having been finally heard on 24.05.2016 and the court on 18.06.2016 delivered the following:-

JUDGMENT

Being aggrieved by the judgment and decree dated 15.11.2008 in O.S.804/96 on the file of Additional Munsiff Court Cherthala, the plaintiffs preferred the present appeal.

2. Statement of facts:- O.S.804/96 is a suit filed by the plaintiffs claiming partition of the plaint schedule property alleging that common predecessor of the Ezhava family namely 'Pappy' purchased the property in the year 1961 for and on behalf of the sub Tharwad. The plaint schedule property together with a large extent was outstanding with a stranger under a mortgagee. The first defendant was the 'Karanavan' of the sub Tharwad of Pappy. He redeemed the plaint schedule property which is a portion of mortgaged property from the stranger out of the income from other properties. By the commencement of 1976 Joint Family Abolition Act all the members of the sub Tharwad became co-owners of the plaint schedule property and hence liable for partition.

3. The first defendant filed written statement contending that the property was not liable to be partitioned as it is his absolute property. Since the original mortgagee was a deemed tenant he is also a deemed tenant under the Kerala Land Reforms Act. In the

light of the contention of the first defendant the matter was referred to the Land Tribunal u/s 125 (3) in order to have a finding with respect to the contention of the first defendant whether he is a deemed tenant. Land tribunal found that first defendant is entitled to deemed tenancy u/s 4(A) of the Kerala Land Reforms Act. The court below accepted the finding and dismissed the suit. Aggrieved by the judgment and decree dated 15.11.2008 the plaintiffs filed the present appeal.

4. Heard both sides.

5. The following points arise for consideration:-

- (1) Whether the first defendant is a deemed tenant as contended by him?
- (2) Whether the finding of the Land Tribunal that first defendant is a deemed tenant is to be interfered by this court?
- (3) Whether the judgment and decree of the court below is liable to be set aside?
- (4) Relief and cost ?.

6. **Point Nos.1 to 3:-** Since these points are inter related and for the sake of convenience can be considered together. Appellants filed the suit as O.S.804/96 before the court below claiming partition of the plaint schedule property contending that the

common predecessor of appellants and respondents named Pappy purchased the property in the year 1961 by way of Ext.A2 document for and on behalf of sub Tharawad. The plaint schedule property together with a large extent was outstanding with a stranger under a mortgagee. 'Karanavan' of sub Tharawad of the Pappy redeemed the plaint schedule property which was a portion of mortgaged property from the stranger out of the income from the other properties. It is the case of appellants that by the commencement of the Joint Family Abolition Act of 1976 all the members of the sub Tharawad become co-owners and appellants and respondents are co-owners and plaint schedule property is liable to be partitioned.

7. The contention taken by the first defendant is that plaint schedule property is not partible and it is his absolute property. He is a deemed tenant under the Kerala Land Reforms Act.

8. Since first defendant contended that he is a deemed tenant, the court below referred the matter to the Land Tribunal u/s 125(3) of the Land Reforms Act. Land Tribunal found that first defendant is a tenant and the court below was constrained to accept the finding of the Land Tribunal and dismissed the suit.

9. The question to be determined by this court is that whether first defendant is a deemed tenant as claimed by him. Ext.A2 is the document executed in favour of common predecessor of appellant/plaintiff namely Pappy by one Balakrishna Menon. It is as per Ext.A1 partition deed, item No.3 in 'D' schedule, Balakrishna Menon obtained the property. It is admitted that property was outstanding under the mortgage in favour of one Xavier. Though there is a discrepancy in the extent of plaint schedule property it is admitted that it is having an extent of 13 cents of garden land though it is stated as 20 cents in Ext.A2. There is no dispute with respect to the identity of the property also. It is also admitted that first defendant namely Govindan who is the elder son of Pappy redeemed the mortgagees right. According to the appellants first defendant Govindan redeemed the plaint schedule property using the income from other properties. It is also the case of appellants that since first defendant is the 'Karnavan' of sub Tharawad and mortgagee was redeemed by using the income from other properties it will inure to the benefit of entire sub Tharawad and after commencement of Joint Family Abolition Act of 1976 all co-owners are entitled for share. It is admitted that the first defendant is the

elder son and he can redeem the property by using his own funds. In this case there is no contra evidence to come into conclusion that first defendant using his own funds to redeemed the mortgagor's rights and it is his private property. First defendant being the elder son he is the 'Karanavan' of the sub Tharawad. Parties in the appeal are governed by Travancore Ezhava Regulation Act at the time of executing Ext.A2 document. Sec 4(3) of the above statute says that thavazhy of a female means group of persons consisting of that female and her issues how long so ever in the female line. Going by the above provisions of the Travancore Ezhava Regulation Act children and grand children in the female line are the members of the Thavazhy of late Pappy. By virtue of Sec.4(7) of Ezhava Regulation Act the eldest member in the Thavazhy is the Karanavan of the Thavazhy. So in this case first defendant namely Govindan being the eldest son of Pappy is the Karanavan of that Thavazhy. No evidence has been produced before the court to come into conclusion that first defendant redeemed the right over the plaint schedule property by using his own funds. No evidence was tendered before the Land Tribunal with respect to this aspect. So it can be safely concluded that first defendant acquired the property

for and on behalf of the Thavazy. In other words it will inure the benefit of family and not the private property or self occurred property of first defendant. In such circumstances plaint schedule property is partible. According to me the finding of the land tribunal is not correct and contrary of the provisions of law and interference in the finding of the land tribunal and in the judgment and decree of the court below is necessary.

10. **Point No.4:-** On the basis of my finding on point Nos.1 to 3 the findings of the Land Tribunal and judgment and decree of the court below dated 15.01.2008 is set aside and a preliminary decree of partition is passed.

In the result, preliminary decree of partition is passed as follows:-

1. Plaint schedule property is partible.
2. Appellant Nos.1 to 8 together are entitled for 1/9 share and separate possession of the plaint schedule property.
3. Appellant Nos.9 to 12 together are entitled for 1/9 share and separate possession of the plaint schedule property.

4. Defendant Nos.3,4 and 5 (Respondents 1 to 3) each are entitled for 1/9 share and $\frac{1}{4}$ of 1/9 share of 2nd defendant.
5. Defendant No.14 is entitled for $\frac{1}{4}$ share of 1/9 share of 2nd defendant.
6. Defendants Nos.6 and 7(Respondents 4 and 5) each are entitled for 1/9 share and separate possession of the property.
7. There is no order of mesne profit.
8. Estate shall bear the costs .
9. Any of the parties are entitled to apply for passing the final decree.

Suit is adjourned sine-die.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 18th day of June, 2016.

Sd/-
Priyachand P.P.,
Sub Judge.

Appendix:- Nil

Id/-
Sub Judge.

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Comd.by:Um

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Sub Judge.

Copy of Judgment in AS 33/09,
Dated: 18.06.2016