

“An appeal can be preferred to the Hon'ble High Court of Kerala within a period of 30 days from the date of Judgment/Order”

IN THE FAMILY COURT, PALAKKAD

Present:- Sri. P.S. Ananthakrishnan, M.A., LL.B.,

Judge, Family Court, Palakkad

Tuesday, the 24th day of January, 2017

(4th day of Magha, 1938 S.E.)

ORIGINAL PETITION No. 475/2013

Mallika, aged 37 years, D/o. Kunju, R/a. Chettikulathil,
Nalleppully Amsom, Chittur Taluk- 678622.

Petitioner

Vs:-

1. Kunju, aged 70 years, S/o. Late Arumughan, R/a. Chettikulathil,
Nalleppully Amsom, Chittur Taluk- 678 622.
2. Narayanan, aged 49 years, S/o. Kunju, R/a. Thekkinthuravil,
Vandithavam Amsom, Chittur Taluk-678622.
- Supple.3. Summa, W/o. Narayanan, Thekkinthurava,
Vandithavalam, Palakkad.

Respondents

This petition coming on 3rd day of January, 2017 for final hearing before me, in the presence of Sri.K. Balachandran, Advocate for the petitioner and of Sri.N.V. Bejoy, Advocate for the R1 and Sri. Rajesh Panangad, Advocate for R2 & R3 and having stood over to this day for consideration this Court delivered the following:-

J U D G M E N T

This is a petition filed under Section 7(1) of the Family Courts Act for the relief under Section 20 of the Hindu Adoptions and Maintenance Act.

2. The petitioner's case in brief is as follows:-

The petitioner is the daughter of the first respondent. The second respondent is her brother and third respondent is his wife. The first respondent was running a rice mill situated in petition schedule properties on rent. Thereafter, he sold the family property and purchased the mill with the property as per document No. 1865/1985 in the name of first and second respondents for and on behalf of the family members. The second respondent was a student at that time and he was not earning any money. The first respondent is

uneducated. So, the name of the second respondent was included in the document to get help from him to the first respondent in running the mill. Therefore, the second respondent has no right over the property. The petitioner is an unmarried lady. She used to help the first respondent in conducting the rice mill. The second respondent married the third respondent on 09.02.1977 and thereafter he started to misuse the income obtained from the rice mill. Therefore the first respondent failed to remit the loan amount and subsequently he stopped the business. Then the first respondent sold 9 cents of property to close the loan. Thereafter, on compulsion from the second respondent, the first respondent divided the property as per a partition deed No.2307/2011 by which he allotted 10½ to him and petition 'B' schedule property to the second respondent. The first respondent has four children including the petitioner and second respondent. The first respondent sold 4 cents of property allotted to him to conduct the marriage of one of his daughters. So the petition 'A' schedule contains only 6½ cents of property. The petitioner is depending upon the respondents. So they are bound to give maintenance allowance to the petitioner. She wants to get ₹ 5,000/- per month from the respondents and she is also wants to get ₹ 2,00,000/- from the respondents for her marriage expenses. So she wants to get the said amount and also wants to create a charge upon the petition schedule property. Alternatively, she wants to get petition 'C' schedule property in her name in lieu of maintenance allowance and marriage expenses. Petition 'C' schedule property is not included in the partition deed. After filing this case, the second respondent transferred the petition 'B' schedule property to the third respondent in order to defeat the right of the petitioner. Therefore she also wants to declare that the partition deed as well as the deed in favour of the third respondent are null and void. Thus this petition.

3. The case of the first respondent in brief is as follows:-

The first respondent admitted that he is the father of the petitioner who is unmarried and is depending upon him. He has also admitted that he has purchased the petition schedule properties by selling his property and since he is uneducated, he included the name of the second respondent in the document. He admitted that he has partitioned the property as per compulsion from the second respondent. He admitted that he has sold 9 cents of property to close the loan and 4 cents of property to conduct the marriage of one of his daughters. The second respondent has no right over the petition schedule property. He is an age old man and is not getting any income. Therefore, he is unable to give anything to the petitioner and the second respondent is bound to satisfy the claim of the petitioner.

4. The second and third respondents filed counter separately which contains their case as follows:-

They admitted the relationship between the petitioner and the respondents. But they denied that the first respondent purchased the petition schedule properties by utilising the money obtained by him when he sold the family property. They denied that on compulsion from the second respondent, the first respondent partitioned the property. They denied that second respondent has no right over the properties and to help the first respondent his name was included in the document. The said property has been purchased in the names of first and second respondents and therefore, they have every right to divide the properties. Therefore, they denied that the said partition deed has no legal validity. They denied that the sale deed in favour of the third respondent has no legal validity. There is no 'C' schedule property. The first respondent has sold the petition 'B' schedule property to the second respondent for ₹ 4,50,000/-. The second respondent has no liability to maintain the petitioner. Hence the petition is liable to be dismissed.

5. On the above pleadings the points to be considered here are :-

1. Whether the petitioner is entitled to get maintenance allowance from the first and second respondents?
2. Whether the petitioner is entitled to get marriage expenses from the first and second respondents ?
3. Whether the petitioner is entitled to get a charge upon the petition schedule properties ?
4. Whether the petitioner is entitled to get a declaration to the effect that the partition deed and sale deed are null and void ?
5. Relief and costs ?

6. The evidence in this consists of oral testimony of PW1, PW2, RW1, Ext.A1 to A8 and B1 to B6.

7. Heard both sides.

8. Point No.1 to 4 :- It is an admitted fact that the petitioner is the daughter of the first respondent and second respondent is her brother. It is also an admitted fact that third respondent is the wife of the second respondent. The petitioner came before this court to get maintenance allowance and marriage expenses from the first and second respondents under Section 20 of the Hindu Adoption and Maintenance Act. It is to be noted that as per the said provision, brother is not bound to give maintenance allowance to the sister. Therefore, no doubt the petitioner is not entitled to get maintenance allowance or marriage expenses from the second respondent. To prove the petitioner's case, she has given evidence as PW1. The petitioner has examined the first respondent as her witness as PW2. The second respondent has given evidence as RW1. Though the petitioner's case is to declare the partition deed as null and void, at the time of giving evidence as PW1, she deposed that she is not disputing the partition deed. Ext.A6 is the copy of partition deed. Therefore, since the petitioner has not challenged the validity of Ext.A6, partition deed, the transfer of petition 'B' schedule property in favour of the third respondent by the second

respondent cannot be declared as null and void. It is pertinent to note that though the first respondent contended that he is unable to maintain the petitioner because he is not earning anything, he has no objection in giving petition 'C' schedule property to her in lieu of her maintenance allowance and marriage expenses. Though the second and third respondents took a contention that petition 'C' schedule property is not in existence, RW1 has no objection in giving petition 'C' schedule property to the petitioner. The petitioner also wants to get petition 'C' schedule property in lieu of maintenance and marriage expenses claimed against the respondents. In short, here absolutely there is no dispute in giving petition 'C' schedule property to the petitioner in lieu of the marriage expenses and maintenance allowance of the petitioner. Therefore, the petitioner is entitled to get the petition 'C' schedule property in lieu of her maintenance allowance and marriage expenses. Since the first and second respondents have no objection in giving the said 'C' schedule property to the petitioner, they are bound to give the said property to the petitioner. Since I found that the petitioner is entitled to get petition 'C' schedule property in lieu of her maintenance allowance and marriage expenses, she is not entitled to get any other relief. So the points are answered accordingly.

9. Point No.5 :- Since I found Point No.2 in favour of the petitioner, she is entitled to get that relief.

In the result, the petition is allowed in part but without cost. The respondents one and two are directed to transfer the petition 'C' schedule property in favour of the petitioner within one month of this decree.

(Dictated to the Confidential Assistant transcribed by him corrected and pronounced by me in open Court on this the 24th day of January, 2017).

Sd/-

Judge, Family Court, Palakkad.

Appendix:

Petitioner's Witnesses Examined:-

PW1 -Mallika

PW2 -Kunju**Petitioners Exhibits Marked:-**

A1-06.04.1985-Agreement between Muhammad Kasim Ravuthar and Kunju.

A2-02.06.1986-Certified copy of Jenm Assignment Deed No.1463/1986 of SRO.Chittur.

A3-20.04.2011-Certified copy of Jenm Assignment Deed No.1445/I/2011 of SRO.Chittur.

A4-03.09.2015-Loan closed receipt issued by The Nallepilly Service Co-operative Bank Ltd. in the name of Kunju.

A5- -Mortgage Deed No.3922/2004 of S.R.O.Chittur.

A6-20.06.2011-Certified copy of Partition Deed No.2307/I/2011 of S.R.O.Chittur.

A7-02.10.2011-Agreement between Kunju and Ganesan.

A8-03.08.2011-Certified copy of Jenm Assignment Deed No.2832/I/2011 of S.R.O.Chittur.

Respondent's Witnesses Examined:-

RW1-Narayanan

Respondent's Exhibits Marked:-

B1-20.06.11-Partition Deed No.2307/I/2011 of S.R.O.Chittur.

B2-14.07.11-Demand Notice Under Section 7 issued by Inspg.Asst.Commissioner, Commercial Taxes, Palakkad in respect of K.Narayanan.

B3-19.08.11-Registered Notice issued by Inspg.Asst.Commissioner, Commercial Taxes, Palakkad in respect of K.Narayanan.

B4-05.03.09-Certified copy of Receipt in ST. 957/01 filed before Chittur Magistrate Court.

B5-02.09.14-Discharge Summary issued by Jubilee Mission Medical College Hospital & Research Institute, Thrissur in the name of Narayanan.

B6-25.09.14-Discharge Summary issued by Jubilee Mission Medical College Hospital & Research Institute, Thrissur in the name of Narayanan.

Sd/-

Judge, Family Court, Palakkad.

Typed by : Z. Shajitha

Compared by : K. Radhika

Copy ready on : 29.04.2017

//True Copy//

(By Order)

Sheristadar, Family Court, Palakkad.

Fair / Copy of Judgment in

O.P. 475/2013

Dated: 24-01-2017

