



2025:KER:30105

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

MAT.APPEAL NO. 815 OF 2019

AGAINST THE JUDGMENT DATED 30.07.2019 IN OP NO.1542 OF 2012

OF FAMILY COURT, IRINJALAKUDA

APPELLANTS/PETITIONERS:

- 1 NIRMALA CHERIYAN,
AGED 48 YEARS,
D/O. KUNNIYIL CHERIYAN, MARILAND DESOM,
KADANAD VILLAGE, MEENACHIL TALUK AND
W/O. SREEKUMAR MENON, ANIYIL HOUSE,
THAZHEKKAD VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
NOW RESIDING AT ERRA 33, ELAVUNGAL ROAD,
PALARIVATTOM, PIN 682 525.
- 2 SOORAJ SREEKUMAR,
AGED 18 YEARS,
S/O.SREEKUMAR MENON, ANIYIL HOUSE,
THAZHEKKAD VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
NOW RESIDING AT ERRA 33, ELAVUNGAL ROAD,
PALARIVATTOM, PIN 682 525.

BY ADVS.
K.S.BHARATHAN
SRI.ABEL ANTONY

RESPONDENTS/RESPONDENTS:

- 1 SUNIL,
AGED 48 YEARS,
S/O. MADAMBIKATTIL SOMAN, PAMBOOR DESOM,
KOLAZHI VILLAGE, THRISSUR TALUK, PIN-680 002.



- 2 SHINE,
S/O. CHANDRASESHAN, ARUNPULLY HOUSE, EDATHIRINJI
VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
THRISSUR-680 733.
- 3 SUBHASH,
AGED 47 YEARS,
S/O. BAHULEYAN, MUNDAKKAL HOUSE, MURIYAD VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR-680 733.
- 4 JOHNSON,
AGED 54 YEARS,
S/O. YACOB, PULLOKKARAN HOUSE, MURIYAD VILLAGE AND
DESOM, MUKUNDAPURAM TALUK, THRISSUR-680 733.
- 5 MAGI PAUL,
AGED 33 YEARS,
W/O. CHERATTA PAUL, MUPLIYAM VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, THRISSUR 680 733.

* ADDL. RESPONDENT NO.6

ADDL.R6 MURIYAD SERVICE CO-OPERATIVE BANK LTD. NO 479,
REPRESENTED BY ITS SECRETARY, MURIYAD. P.O, THRISSUR,
PIN - 680 683.

*[ADDITIONAL 6TH RESPONDENT IS IMPLEADED AS PER ORDER
DATED 3/8/2022 IN IA 1/2022]

BY ADVS.
SRI.P.V.GEORGE (PUTHIYADOM)
T.N.MANOJ
G.P.SHINOD
AJIT G ANJARLEKAR
GOVIND PADMANAABHAN
ATUL MATHEWS

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON
08.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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**SATHISH NINAN &
SHOBA ANNAMMA EAPEN, JJ.**

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Mat. Appeal No.815 of 2019

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Dated this the 8th day of April, 2025

J U D G M E N T

Sathish Ninan, J.

The appellants, who are the petitioners before the Family Court, are the wife and the son. The first respondent is the husband/father. The other respondents are the assignees of properties under the first respondent-husband. The Original Petition was filed seeking to set aside Exts.A1 to A3 Sale Deeds. The Original Petition was dismissed by the Family Court.

2. According to the petitioners, the first respondent-husband is a drunkard and did not allow a peaceful life of the petitioners. He is addicted to alcohol. The petitioners are residing separately since 2008-09. The plaint schedule properties belong to the first respondent. The petitioners have a charge over the same towards their maintenance. Respondents 2 to 5 and



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the husband of the sixth respondent claimed to be friends of the first respondent and aided and influenced the first respondent to alcohol addiction. He was treated at various hospitals. By exerting fraud and undue influence, respondents 2 to 4 got the plaint schedule property conveyed in their favour, under Exts.A1 to A3 Sale Deeds. The sale deeds are not supported by consideration. They have been got executed taking undue advantage of the fiduciary relationship with the first respondent. The petitioners have charge over the property for their maintenance. The conveyances have been executed to defeat the right of the petitioners. With the above allegations the Original Petition was filed seeking to set aside Exts.A1 to A3 Sale Deeds.

3. The first respondent died pending the Original Petition. The other respondents denied the allegations levelled. They denied of having aided the first respondent in his liquor addiction etc. The allegations



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of fiduciary relationship and undue influence were denied. It was contended that the sale deeds are supported by valid consideration. It was also contended that after Exts.A1 to A3 conveyance the first respondent had purchased another property having an extent of 5 cents with a residential house thereon which, on his death, has devolved on the petitioners.

4. The Family Court held that the allegations of fiduciary relationship, undue influence and lack of consideration for Exts.A1 to A3 Sale Deeds were not proved. It was also held that the petitioners are not entitled for a charge over the property under Section 27 of the Hindu Adoption and Maintenance Act. The claim for charge under Section 39 of the Transfer of Property Act was also declined.

5. We have heard the learned counsel on either side.

6. With regard to the challenge against Exts.A1 to A3 Sale Deeds on the ground of it being vitiated by



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fraud, undue influence etc., as was noticed, the Family Court has negatived the challenge based on evidence. The learned counsel for the appellant concedes that the evidence is not sufficient enough to contend otherwise before this Court. So also he concedes on the finding of the Family Court declining charge under Section 27 of the Hindu Adoption and Maintenance Act.

7. The only point urged by the appellant before this Court is based on Section 39 of the Transfer of Property Act. The wife is entitled for maintenance from her husband. The alienation under Exts.A1 to A3 cannot affect her right of maintenance. In terms of Section 39, the wife is entitled to proceed against the properties of the husband, which could even be traced to the hands of a purchaser with notice, he contends. To fortify his contention that there need not even be a decree for maintenance to attract Section 39, but a right to claim maintenance is sufficient, the learned counsel relied on the judgments in *Vaddeboyina Tulasamma v. Vaddeboyina Sesha Reddi* (1977



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KHC 820), Divakaran v. Chellamma (1985 KHC 225), Raghavan and another v. Nagammal and another (1979 KHC 1710). Hence, the alienations under Exts.A1 to A3 are subject to the charge for maintenance of the petitioners, is the contention.

8. The relief claimed in the original petition reads thus :-

“A) കല്ലേറ്റംകര സബ് രജിസ്ട്രി 2012-ൽ 1110, 3031, 2942 എന്നീ ആധാരങ്ങൾ ഹർജി പട്ടിക വഹകൾക്കോ ഹർജിക്കാരുടെ ചിലവിന് കിട്ടുവാനുള്ള അവകാശത്തിനോ ബാധകമല്ല എന്ന് കണ്ട് ആയത് റദ്ദാക്കിയും.

B) ഈ വ്യവഹാരത്തിന്റെ സകല കോടതി ചെലവുകളും എന്തുകൊണ്ടായാട് ഹർജിക്കാർക്ക് തരവാൻ കല്പിച്ചും.

C) വ്യവഹാരമദ്ധ്യേ ഹർജിക്കാർ അപേക്ഷിക്കുന്നതും കോടതിക്ക് യുക്തമെന്ന് തോന്നുന്നതുമായ നിവർത്തികൾ അനുവദിച്ചും ഒരു വിധി ഉണ്ടാകുവാൻ വണക്കമായി അപേക്ഷിക്കുന്നു.”

The petitioners seek to set aside the sale deeds on entering a finding that it cannot affect their right of maintenance. Section 39 of the Transfer of Property Act reads thus :-

“39. Transfer where third person is entitled to maintenance.—Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.”



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Evidently, even if the petitioners have right to maintenance, the conveyances under Exts.A1 to A3 does not become void or voidable rendering them liable to be set aside. Therefore, the prayer sought could not, at any rate, be granted. Even the learned counsel for the appellant would not contend otherwise.

9. The learned counsel for the appellant would argue that, the Court can very well mould the relief and grant a declaration that the petitioners have charge over the property for their maintenance and that Exts.A1 to A3 conveyances are subjected to the said charge.

10. It is important to note that, the Original Petition does not contain a prayer for recovery of maintenance. If the relief sought is considered as one for declaration of charge over the property for maintenance, such a prayer for a mere declaration is not maintainable in terms of the proviso to Section 34 of the Specific Relief Act. Section 34 reads thus:



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Discretion of court as to declaration of status or right :-

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

The proviso obliges the petitioners to seek for the further relief of recovery of maintenance. The mere suit for declaration of charge over the property could not be maintained.

11. When the above was pointed out to the appellants during the course of hearing, they filed an application as IA 1/2025 on the adjourned date of hearing, seeking leave to amend the Original Petition to incorporate a prayer for recovery of past maintenance for a period of three years and also for future



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maintenance. The Original Petition is of the year 2012, and this appeal is of the year 2018. For all these years there had been no claim for maintenance. Respondents 2 to 4 assigned the property to respondents 5 and 6. They mortgaged the property in favour of the additional respondent Co-operative Bank. The Bank obtained an award in ARC proceedings and as of now the amounts due is more than ₹ 3.25 Crores. We do not think that at this distance of time the petitioners are to be permitted to amend the original petition to incorporate a relief claiming maintenance. The application is liable to be dismissed.

12. With regard to the claim based on Section 39 of the Transfer of Property Act, we do notice that proper issues with regard to, the entitlement of the petitioners for maintenance, as to whether Exts.A1 to A3



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Sale Deeds were for valid consideration and without notice of the right of the petitioners, etc. were not raised. The Court on finding that some amounts have been credited into the account of the deceased on or near the date of Exts. A1 to A3 Sale Deeds, held that the transactions are supported by consideration. Apart from the fact that there has not been proper consideration of the said aspect, the other ingredients of Section 39 were not considered at all. Hence the finding of the Family Court on the claim under Section 39 is liable to be set aside and we do so.

13. However, having found that the claim for a mere declaration of charge over the property is not maintainable, the Original Petition is only to be dismissed. Hence, though for varying reason, the dismissal of the Original Petition by the Family Court



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warrants no interference.

Resultantly, the appeal fails and is dismissed. No costs.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

kns/-

//True Copy//

P.S. To Judge