ITEM NO.107 COURT NO.7 SECTION XIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5220 OF 2000

KOCHUKUNJU NAIR (DEAD) BY LRS. & ORS. Appellant (s)

VERSUS

RAMACHANDRAN NAIR & ORS. Respondent(s)

(With office report)

Date: 14/12/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. P.K. Krishnamurthy, Sr. Adv.

Mr. M.T. George,Adv.

For Respondent(s) Mr. T.L.V. Iyer, Sr. Adv.

Mr. M.K.D. Namboodiri,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order. No costs.

(Ravi P. Verma) (Pushap Lata Bhardwaj)

Court Master Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5220 OF 2000

KOCHUKUNJU NAIR (DEAD) BY LRS. & ORS. APPELLANT (S)

Versus

RAMACHANDRAN NAIR & ORS. RESPONDENT (S)

O R D E R

Two purported deeds of gift were executed by the original defendant No.1 (since deceased) in favour of his wife, the original plaintiff as also the appellants herein. One deed was executed in March 1944 and the other in April 1947. The plaintiff during the life-time of his father,

the original defendant No.1, filed a suit inter alia for a decree for partition and separation. In the said suit, a defence was taken that the said documents do not constitute a 'gift' within the meaning of Section 122 of the Transfer of Property Act, 1882. Furthermore, a defence was taken that the said purported gift had not been accepted. The learned trial Judge decreed the suit. The first appellate Court,

however, reversed the said findings of the learned trial Judge opining that the said documents do not constitute a deed of gift. In support of its decision, the learned first appellate Court relied on decision of this Court in Baby Ammal Vs. Rajan Asari, (1997) 2 SCC 636. The recital made in the document was:

> "All the right to enjoy the property and the right to reside in the building will remain with me during my lifetime and Rajan Asari will derive the said rights with full freedom after my lifetime."

This Court held that:

> "A reading of the above would indicate

that the appellant had retained the title to the enjoyment of the property during her lifetime as full owner with all rights. Section 122 of the Transfer of Property Act defines gift executed in the manner indicated thereunder divesting the title to and possession of the donor in the property and vesting the same in the donee under Section 123. These must be

proof of delivery and acception of possession of the gifted property. In this case, both the title and possession in respect of the property remained with the plaintiff. There is no acceptance of possession by the respondent in the light of above recital. As a consequence, the appellant remained to be the owner during her lifetime. Under these circumstances, it cannot be construed to be a gift deed in favour of the respondents. At best, it would be only a licence in favour of the respondent to remain in possession jointly with the appellant. Therefore, the High Court was not right in concluding that Ex. A-1 is a gift deed and that

the appellant has no title to the property for declaration as he had parted with possession."

The High Court in Second Appeal filed by the respondents did not formulate any substantial question of law at the time of admission of the appeal. It, however, proceeded to determine the question as to whether the decision of this Court in Baby Ammal (supra) would apply to the facts of the case. The learned single Judge of the

High Court opined that the said decision of this Court in Baby Ammal (supra) would have no application.

The question which, inter alia, involved in the Second Appeal was not only construction of the terms of the documents Ex. A-1 and A-2 but also on the question as to whether they were accepted by the donees thereat or not.

Keeping in view the nature of discussions made by the learned single Judge of the High Court in relation to interpretation of the said documents, we are of the opinion that the matter should be considered afresh. We would have ourselves dealt with the question although no

appropriate substantial question of law was formulated by the High Court at the time of admission of the appeal but we are unable to do so as the learned counsel for the parties disagree as to whether the said documents produced before us have correctly been translated or not. We, therefore, set aside the judgment and remand the matter back to the High Court directing that the matter be considered afresh in accordance with law formulating substantial question of law in terms of Section 100 of the Code of Civil Procedure.

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Appeal is allowed. No costs.

.....J.
(S.B. SINHA)

New Delhi; .....J.
December 14, 2006. (MARKANDEY KATJU)