ITEM NO.104 COURT NO.8 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. 5165/2006

MADALAPPURA KUNHIKOYA & ORS **APPELLANT(S)**

VERSUS

KUNNAMGALAM BEEBI & ORS. **RESPONDENT(S)**
(WITH APPLN. (S) FOR C/DELAY IN FILING SLP AND URGING ADDL. GROUNDS AND SUBSTITUTION AND PERMISSION TO FILE ADDL. DOCUMENTS AND EXEMPTION FROM FILING O.T.)

Date : 25/02/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) **Dr. S. Gopakumaran Nair, Sr. Adv.**
Mr. T. G. Narayanan Nair, Adv.
Mr. K.N. Madhusoodhanan, Adv.

For Respondent(s) **Mr. Krishnan Venugopal, Sr. Adv.**
Mr. A. Raghunath, Adv.
Mr. Satheesh Mohanan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay in filing application for substitution of deceased respondent No.9 is condoned.

Applications for substitution of deceased respondents Nos. 31 and 9 are allowed subject to all just exceptions.

The appeal is dismissed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5165 OF 2006

MADALAPPURA KUNHIKOYA
& ORS. ...APPELLANTS

VERSUS

KUNNAMGALAM BEEBI & ORS. ...RESPONDENTS

O R D E R

1. Delay in filing application for substitution of deceased respondent No.9 is condoned.

2. Applications for substitution of deceased respondents Nos. 31 and 9 are allowed subject to all just exceptions.

3. This is an defendants' appeal against a decree by which suit of the plaintiffs for title and possession has been decreed. The aforesaid decree has been affirmed in first appeal by the High Court.

4. The case of the plaintiffs in the suit filed is to the effect that they are the members of Kunnamgalam tavazhy which was a branch of Pooradam tharwad. According to the plaintiffs one Pookoya Haji was the last surviving member of the Pooradam tavazhy and the defendants are the wife and children of aforesaid Pookoya Haji. The plaintiffs allege that as per custom prevailing in the Island, the properties belonging to the tharwad in the island are called Velliyazhicha properties (joint family properties) (hereinafter referred to as "the Friday properties") and Vyazhicha properties (self-acquired properties) (hereinafter referred to as "the Thursday properties"). The Friday properties belong to the tharwad and are

to revert to the tharwad on the death of last surviving member of a branch. According to the plaintiffs, contrary to the custom in vogue, Pookoya Haji had staked a claim to the Friday properties. The matter was resolved by a compromise deed dated 21st August, 1957 (Exhibit A-5) by which some of the Velliyazhicha (Friday) properties were agreed to be converted to Vyazhicha (Thursday) properties while the remaining were to remain as Velliyazhicha (Friday) properties. On the basis of the aforesaid compromise, an order was passed by the Tahsildar on 21st August, 1957 (exhibited as Exhibit A-6).

5. According to the plaintiffs, contrary to the agreement, on 16th October, 1976, Pookoyo Haji had executed Gift Deed

(Exhibit B2) in favour of his legal heirs in respect of all the Velliyazhicha (Friday) properties. The same being contrary to the compromise (Exhibit A-5) and the order of the Tahsildar (Exhibit A-6), the suit in question was filed claiming the reliefs earlier noticed.

6. The defendants filed their written statement contending that the compromise deed (Exhibit A-5) was the result of coercion and exercise of undue influence on them by the plaintiffs. The defendants further contended that no such custom as claimed by the plaintiffs existed and in any case with the coming into force of the Constitution such compromise will cease to have any legal effect. In support, reliance has been placed on a judgment of the Kerala High Court in *Sheikriyammada*

Nalla Koya **vs.** ***Administrator, Union Territory of Laccadives, Island*** **[1967 K.L.T. 395].**

7. The learned trial Court by its judgment dated 8th June, 1988 considered the plea set up by the defendants with regard to the legality of Exhibit A-5 and Exhibit A-6 against issues Nos.8, 9 and 11 framed in the suit. On a consideration of the evidence and materials adduced by the parties, the learned trial Court came to the finding that the case set up by the defendants with regard to Exhibit A-5 and Exhibit A-6 has not been substantiated. In this regard, the learned trial Court specifically recorded a finding that though the compromise is dated 21st August, 1957, at no point of time the defendants had brought any legal action to have the

same invalidated on the grounds pleaded in the written statement filed in the suit. The learned trial Court also recorded a finding that the compromise between the parties (Exhibit A-5) was acted upon. Though the learned trial Court also dealt with the question of the existence of the custom as claimed by the plaintiffs, it is not necessary to go into the said issue for the purpose of deciding the present appeal.

8. In the first appeal, the High Court, on a consideration of the rival claims, framed the following three questions for decision:

> **"i) What was the custom followed by the parties and whether Exts. A5 and A6 can be ignored on the ground that they were brought about by coercion?**

ii) Whether Ext. B2 gift deed was acted upon and whether it ws mandatory for the plaintiffs to get it set aside?

iii) Whether the plaintiffs' possession over the plaint schedule properties can be declared and injunction granted against the defendants?"

9. Thereafter against question No.(i) the High Court reiterated the findings of the learned trial Court that the defendants had failed to prove the case set up by them, namely, that the compromise was vitiated on account of coercion and/or undue influence. In this regard the High Court specifically observed that the defendants had adduced no evidence in this regard.

10. The issue with regard to the existence of a custom as claimed by the plaintiffs or otherwise as pleaded by the

defendants, in our considered view, would be altogether irrelevant for the purposes of adjudication of the entitlement of the parties in the present appeal. Whether a custom exists or not the parties had agreed to exchange of Thursday and Friday properties specifically recorded in the deed of compromise at Exhibit A-5 and referred to in the order of the Tahsildar (Exhibit A-6). If the parties had agreed to be bound by the terms of the compromise, naturally, they would be also bound by the orders of the Tahsildar (Exhibit A-6) unless, of course, it can be held that the compromise itself was vitiated by fraud, coercion or undue influence. The findings to the contrary recorded by two courts are concurrent findings of fact. That apart, we have

considered the materials and evidence adduced by the parties on the above said issue and the basis of the findings recorded by the trial Court and the High Court on the same. On such consideration, we unhesitatingly come to the conclusion that the findings recorded in this regard are justified and does not disclose any basis for our interference.

11. Having arrived at the aforesaid conclusion, the appeal will have to be dismissed which we hereby do. The judgment and decree passed by the High Court is affirmed.

.....,J.
(RANJAN GOGOI)

.....,J.
(N.V. RAMANA)

NEW DELHI
FEBRUARY 25, 2015