

Kerala High Court

Parameswaran Pillai Gopinathan ... vs Mathammal Krishnammal on 9 June, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

SA.No. 267 of 1998(F)

1. PARAMESWARAN PILLAI GOPINATHAN NAIR  
... Petitioner

Vs

1. MATHAMMAL KRISHNAMMAL  
... Respondent

For Petitioner :SRI.GOPAKUMAR R.THALIYAL

For Respondent :SRI.M.R.ANANDAKUTTAN

The Hon'ble MR. Justice HARUN-UL-RASHID

Dated :09/06/2010

O R D E R

HARUN-UL-RASHID, J.

-----  
S.A.No.267 Of 1998  
-----

Dated this the 9th day of June, 2010.

J U D G M E N T

The defendant in O.S.No.205 of 1989 on the file of the Principal Munsiff Court, Nedumangad is the appellant. The suit was filed for declaration and partition. The trial court passed a preliminary decree declaring plaintiff's right to partition 1/5 share by metes and bounds over suit property on paying proportionate redemption price and declaring that the plaintiff is entitled to mesne profits from the date of possession. The appeal preferred by the appellant/defendant is dismissed confirming the judgment and decree passed by the trial court. Parties are hereinafter referred to as the plaintiff and defendant as arrayed in the suit.

2. Admittedly, the plaintiff's father executed a sale deed for and on behalf of the plaintiff to the first defendant as per document No.576/36/67 in the year 1967 marked as Ext.B2. At the time of

execution of Ext.B2 sale deed the plaintiff was a minor. It is contended by the plaintiff that the sale deed is not binding on the plaintiff and it is not supported by consideration to S.A.No.267 Of 1998 ::2::

the extent of the share of the plaintiff. It is contended that the sale deed executed in favour of the plaintiff is void and that he is entitled to partition and separate possession of his 1/5 share ignoring the sale deed. The suit was filed to declare Exts.A1 & B2 sale deeds as void ab-initio and for partition and separate possession of 1/5 share. The defendant resisted the suit and prayed for dismissal of the suit. The appellant/defendant inter alia contended that the suit is barred by limitation; the sale deed was executed by the guardian of the plaintiff for valid consideration and therefore the plaintiff is not entitled to any share and therefore the plaintiff is not entitled to relief for setting aside the sale deed and claim 1/5 share.

3. The trial court held that Ext.B2 sale deed executed on behalf of the plaintiff is void and the court further held that since the sale deed is a void document, Article 60 of the Limitation Act will not apply. In that premise a decree was passed by the trial court. The appellate court confirmed the findings of the trial court and dismissed the appeal. There is no discussion by the trial court nor any finding recorded that Exts.A1 & B2 sale deeds S.A.No.267 Of 1998 ::3::

are void. Learned counsel for the appellant brought to the notice of this Court Section 8(3) of the Hindu Minority and Guardianship Act, 1956. Section 8(3) reads follows:

"8. Powers of natural guardian.-

(1) The natural guardian of Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant. (2) The natural guardian shall not, without the previous permission of the court, -

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub- section (2), is voidable at the instance of the minor or by any person claiming under him."

S.A.No.267 Of 1998 ::4::

Article 60 of the Limitation Act mandates that a suit to set aside a transfer of property made by the guardian of a ward shall be filed by the ward who has attained majority within three years of his attaining majority. Admittedly, the suit was filed beyond three years and at the time of filing the suit the plaintiff was aged 27 years. Since the plaintiff did not approach the court of law within the time limit prescribed under the Limitation Act the suit is barred by limitation. Learned counsel for the appellant also brought to the notice of this Court the decisions reported in Ramadas Menon v. Sreedevi (2004(1) KLT 323), Vishwambhar and Others v. Laxminarayan and Another (2001(6) SCC 163) and M.C.Mehta v. Union of India and Others (2004(8) SCC 784).

4. The suit was filed when the plaintiff attained the age of 27, more than 9 years after attaining majority. Therefore, the suit is barred by limitation. Since the suit is barred by limitation the other contentions of the plaintiff ought not have been considered by the trial court and the suit ought to have dismissed as barred by limitation. In the light of the provisions quoted S.A.No.267 Of 1998 ::5::

above and the decisions reported above, the suit itself is barred by limitation. In the circumstances, the plaintiff is not entitled to any reliefs claimed in the plaint.

In the result, the appeal is allowed. The judgment and decree passed by the court below is set aside and the suit stands dismissed. There will be no order as to costs.

HARUN-UL-RASHID, Judge.

bkn/-