

Govind Potti Govindan Namboodiri

Vs

Kesavan Govindan Potti and Others

Civil Appeal No. 2114 (N) of 1972

(O. Chinnappa Reddy, K. Jagannatha Shetty JJ)

22.07.1987

JUDGMENT

JAGANNATHA SHETTY, J. -

1. This appeal by special leave is against the judgment and decree dated July 16, 1971 passed by the High Court of Kerala in Appeal Suit Nos. 183, 195 and 249 of 1966.
2. The appellant is the plaintiff and respondents are defendants 1 to 34 in original Suit No. 35 of 1961 of the Sub-Court, Alleppey, Kerala State. It is a suit for partition in which the plaintiff claims 1/33 share in the plaint properties. The plaintiff and defendants 1 to 33 are members of an undivided Malayala Brahmin illom. They are the descendants of one Vishnu Embran [refereed to hereinafter as Vishnu (Senior)]. The relationship of the parties with Vishnu (Senior) is set out in genealogical table annexed to the common judgment of the High Court. Suffice it to state here that Vishnu (Senior) had three sons : Kesavan, Krishnan and Narayanan. The plaintiff is the grandson of Kesavan. One of the sons of Kesavan was given the name of his grandfather. To avoid confusion, we may call him as Vishnu (Junior).
3. Vishnu (Senior) did not remain with the members of his illom. When he was 17, he took some properties of his illom for maintenance and moved out of his native village. He settled at a place called Chambakulam. There he was earning by performing Iswara Sevas like Santhi Ceremonies and Parikarmam works in temples. In the course of time he acquired some properties.
4. Vishnu (Senior) who went out to eke his livelihood at 17 reached 71. He then thought of peacefully retiring. He wanted that his children after his death should not quarrel over the properties. With their full consent, he executed Ex. P-1, a partition deed dated October 3, 1074 M.E. corresponding May 15, 1889 A.D. Thereunder the properties acquired by him were divided into four shares described in the deed as Schedules A, B, C and D. He gave Schedule A to Kesavan, Schedule B to Krishnan, Schedule C to Narayanan and Schedule D to his grandson Vishnu (Junior). These schedules should not be confused with the plaint Schedule properties. Plaint A Schedule consists of property given to Vishnu (Senior) from his original illom for the purpose of his maintenance. Plaint Schedule consists of properties under A and D Schedules in Ex. P-1. The other schedules in the plaint are not much relevant for this case. So they are not referred to.
5. The case of the plaintiff, to put it shortly is that Plaint B Schedule properties have been acquired out of the income from Plaint A Schedule and hence they are also the illom properties in which he is entitled to a share on per capita basis.

6. Defendants 1 to 10, 24 to 26 and 29 to 33, supported the plaintiff. Defendants 11, 13, 16 to 21, 22 and 27 contested the suit. The case of the contesting defendant is that Vishnu (Senior) had no surplus income from Plaintiff A Schedule properties and the acquisitions made by him which were the subject matter of division under Ex. P-1 were his separate properties.

7. The trial court accepted the case of the plaintiff. It held that parties are governed by Marumakkathayam law. Plaintiff A Schedule properties are illom properties. Vishnu (Senior) could get surplus income therefrom. That available surplus was utilised for purchasing properties dealt with under Ex. P-1. The said properties are, therefore, the illom properties which are available for partition. The court also said that in any event, the parties by their subsequent conduct appear to have treated the properties as illom properties. Accordingly, it passed a preliminary decree for partition on per capita basis.

8. Against the said decree there were appeals and cross-objection before the High Court.

9. The main question urged before the High Court related to the nature of the Plaintiff B Schedule properties. The High Court on appraisal of the oral and documentary evidence held as follow :

10. There is no acceptable evidence to show what were the properties allotted to Vishnu (Senior) for his maintenance when he left his illom, or the income therefrom. There is no material to prove that the Plaintiff A Schedule properties were given to Vishnu (Senior) for his maintenance. Nor there is evidence to establish that the Plaintiff B Schedule properties were acquired with the aid of surplus income from Plaintiff A Schedule properties.

11. With regard to properties allotted to Vishnu (Junior) under Ex. P-1 and his subsequent conduct to treat the properties as joint family properties, the High Court observed :

The point is, whether there was any intention on the part of Vishnu (Junior) to treat the properties as illom properties. It is no doubt a principle of Hindu law that where a coparcener throws his self-acquisition into the common hotchpotch with the volition that the self-acquisition should become joint family properties they will assume the character of joint family properties. It is doubtful whether this principle of Hindu law can be applied to the parties here. As already stated, there is no evidence that Vishnu (Junior) had the volition to throw D Schedule properties into the common hotchpotch.

12. In other words, it was observed firstly, there was no intention on the part of Vishnu (Junior) to treat his properties as illom properties; secondly, even if he had such an intention it would be doubtful whether the principles of Hindu law could be applied to the parties.

13. With these conclusions, the High Court reversed the decree of the trial court but it passed a preliminary decree in regard to Plaintiff A Schedule and some other properties as under :

As Plaintiff A Schedule was allotted only for the maintenance of Vishnu (Senior) the possessory interest in the properties comprised therein and attributable to the share of Kesavan would properties excluding the sons of Kesavan. As regards B Schedule properties excluding the properties comprised in the D Schedule in Ex. P-1 they being the self-acquisitions of Vishnu (Senior) will be divided equally among the sons of Kesavan. The D Schedule properties in Ex. P-1 comprised in the Plaintiff B Schedule being the absolute properties of Vishnu (Junior), namely defendants 11 to 21. The income from Plaintiff A Schedule which is attributable to the share of Kesavan

and the Plaint B Schedule properties except the income from D Schedule in Ex. P-1 will be distributed among the sons of Kesavan equally. The income from the D Schedule properties in Ex. P-1 and included in the Plaint B Schedule will be given to the legal representatives of Vishnu (Junior).

14. Before we consider the contentions urged before us, it will be better to clear the mental cobweb as to the law applicable to Malayala Brahmins. The trial court said that they are governed by Marumakkathayam law. The trial court did not say anything specific. It appears to have doubted the applicability of the principles of Hindu law to them. A question of this nature should not have been kept in doubt. As a matter of fact no point that comes for consideration should be kept in doubt by courts. The litigants come to courts for decisions and not for obtaining doubtful opinions. The court, therefore, should not be a prisoner of indecision. The clarity and promptness in decision making are the need of the hour. That would go a long way to reduce the docket explosion.

15. Fortunately, for us the problem present little difficulty, in view of the stand by counsel on both sides. Our attention has been drawn to the decision of the Kerala High Court in Kunji Amma Narayani Amma v. Dhathri Antherjanan (1954 KLT 155). There it was observed at page 158 :

On behalf of the plaintiff respondent, the learned Advocate General argued that the principles of Hindu law are not applicable and that the case should be guided by rules of Marumakkathayam law. In Travancore it has been held from very early times that the Malabar Brahmins are governed by principles of Hindu law as modified by local custom (6 TLR 143, 19 TLR 241, 34 TLR 262, 19 TLJ 441) in Parmeswaran Narayanan v. Nangeli Antharajanam (10 TLR 151) a decision of the Royal Court of Appeal of Travancore and Narayanan Narayanroo v. Kunjikutty Kutty (20 TLR 65 (FB)) it was held that unless Malayala Brahmins can be shown to have deviated in any respect from the interpretation put upon old texts by modern Hindu sages and adopted different practices, they should be held bound by Hindu law as now understood and acted upon elsewhere. The main object of the Malayala Brahmin Act 3 of 1106 was to make provision for better management of tarwads, to define and limit the power of Karnavan, to improve the rights of the junior members and to lay down the rules of intestate succession in respect of their self-acquired properties. Appropriate provisions were made in the Act to achieve these objects. We do not feel justified in holding that the plaintiff and defendant 1 are governed by principles of Marumakkathayam law, merely because such safeguards as are found in Marumakkathayam law have been incorporated in the Malayala Brahmin Act.

16. No argument has been addressed before us that the view taken in the above case is incorrect. It can, therefore, be stated and indeed not disputed that Malayala Brahmins are governed by Hindu law, unless they can be shown to have deviated in any respect and adopted different practices, like local customs, if any. Some of their rights have now been regulated by the Kerala Nambudiri Act, 1958 (Act 27 of 1958). The Act provides for the family management and partition of illom properties among Nambudiri Brahmin community. Section 13 of the Act confers right on a member of illom to claim partition on per capita basis.

17. The law being thus clarified, we may now turn to the contentions urged by Shri Vishwanatha, learned counsel for the appellant. He urged that the High Court proceeded on the wrong assumption that there is no proof that the Plaint A Schedule properties are illom properties that were given to Vishnu (Senior) for his maintenance. We think the counsel is right. That seems also obvious and causes no difficulty. In fact, it was admitted by all the defendants (see para 19 of the trial court judgment) that the Plaint A Schedule is common illom properties which were in possession of

Vishnu (Senior) under a maintenance arrangement. There can, therefore, be no doubt or dispute on this aspect of the matter.

18. The question next to be considered is whether Plain B Schedule or the properties dealt with under Ex. P-1 are also illom properties. They are undisputedly the acquisitions made by Vishnu (Senior) from time to time. They could be regarded as illom properties provided it is established that they have been acquired with the aid of illom properties. That of course is the case put forward by the plaintiff. But the relevant evidence on record is scanty. The High Court was, therefore, justified in stating that there is no acceptable evidence produced in the case to support the plea of the plaintiff.

19. The matter also becomes plain if we turn to the terms of Ex. P-1 on which Shri Krishnamurthy Iyer for the contesting respondents mainly depended. It is an ancient deed, executed at an undisputed point of time. The deed at the beginning states that all the properties divided thereunder were acquired in the name of the father "which the assets obtained by the personal efforts and improvements of mine and my children". It means out of the personal exertions of the father and sons. The plaintiff himself has stated that Vishnu (Senior) was doing Iswara Sevas in temples like Santhi ceremony and Parikarmam works. It is said to be the hereditary profession of Malayala Brahmins and the illom to which the parties belong. But the income earned by any member of an illom from such practice would become the joint family property. It would be separate property of the individual. So too the properties purchased out of such income. It cannot become joint family property. The position, however, may be different if a member earns from such practices which exclusively belong to the joint family.

20. Another significant recital in Ex. P-1 may now be noticed. It provides that the properties were divided into four shares after taking into consideration the efforts made by each party to acquire the movable and immovable properties. It means the division was as per contribution made by each party. If the properties were illom properties, this recital has no place in the deed.

21. The deed does not refer to undisputed illom properties, that is the Plain A Schedule. It is a deed of partition. If the properties acquired by Vishnu (Senior) were also regarded as illom properties, there was no good reason for him to remain silent in respect of the possessory right of the Plain A Schedule. He ought to have, in the context, referred to it as to who should be in possession and what he should do about the income therefrom. Above all the deed finally provides that the parties shall enjoy with absolute rights the properties allotted in the respective shares. These indications clearly go to show that the properties dealt with under Ex. P-1 were the self-acquisitions of Vishnu (Senior). We thus agree with the conclusions of the High Court though not for all the reasons stated.

22. In the result, the appeal fails and is dismissed with costs.

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