

SUPREME COURT OF INDIA

Sivasankar V.K.

Vs.

V.K.Sivan

C.A.No.1206-1207 of 2015

(N.V.Ramana and Mohan M.Shantanagoudar,JJ.,)

02.11.2018

JUDGMENT

Mohan M.Shantanagoudar,J.,

1. These appeals are presented by the unsuccessful Defendant No. 3 against the concurrent findings given by the Court of Subordinate Judge, Kozikode in O.S. No. 203 of 1996 and the High Court of Kerala in A.S. No. 1044 of 1998. It is relevant to note that the other defendants have accepted the judgment of the Trial Court, which decreed the suit for partition of the suit property, granting 1/3rd share to the plaintiff, and consequently did not file any appeal against the judgment. It was only Defendant No. 3 who questioned the judgment of the Trial Court, and failed in the appeal. A review petition filed by him was also dismissed.

2. The main issue involved in these appeals is the interpretation of the terms of a Will (Exhibit B-1) executed by the late Komappan in the year 1940 regarding the bequest of the suit property, i.e., Item Nos. 1 and 2 of 'Schedule A' of the Will. Both the Trial Court and the High Court have on interpretation of the Will and considering the other material on record concluded that the plaintiff is entitled to 1/3rd share in the suit property according to the terms of the Will.

3. On reading the Will in question, we find that specific bequests have been made (except 'Schedule A') by Komappan in favour of his sons, Choikutty and Peravakutty and his daughter Perachikutty, as well as in favour of Komappan (Junior), son of the late Peravan, the pre-deceased son of the testator, and in favour of Smt. Thirumala, wife of Peravan. However, the testator had not bequeathed the property falling under 'Schedule A' in favour of the aforementioned persons. On the other hand, the testator intended to keep the said property described in 'Schedule A' in common, reserving with his wife the right to take income therefrom and with all the legatees, the right to reside in the house situated therein. It can be borne out from reading the entire Will that after their lifetime the surviving male children of said Choikutty, Peravakutty and Komappan (Junior), were to manage and administer and get the property. The material question which the court would have to decide

in this matter is, whether taking into account the document in question and all the relevant facts into consideration it could be said that the donor intended to confer the right over the property in favour of the legal representatives of the aforementioned three persons to the extent of 1/3rd each. It is needless to observe that it is within the power of the testator to decide whether he wants the property to be held by the male members of the three branches, has to be inferred from the language of the Will and attending circumstances. In the instance case, it is abundantly clear from all the attending circumstances, and the reading of the entire will, that the testator wished that 'Schedule A' properties are to be enjoyed by the male children of the aforementioned three persons to the extent of 1/ 3rd each.

4. In this view of the matter, in our considered opinion, the Trial Court as well as the High Court have rightly come to the conclusion that the plaintiff has got 1/3rd share in the properties under 'Schedule A' to Exhibit B-1 Will. The contention of the appellant that the male children of Choikutty, Peravakutty and Komappan (Junior) are entitled to equal shares cannot be accepted. Hence, the appeals fail and stand dismissed.