2025:KER:30913

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 10TH DAY OF APRIL 2025/20TH CHAITHRA, 1947

RSA NO. 1112 OF 2011

AGAINST THE JUDGMENT AND DATED 29.03.2011 IN AS NO.6 OF 2010 ON THE FILES OF THE SUB COURT, MANJERI ARISING AGAINST THE JUDGMENT DATED 30.06.2000 IN OS NO.294 OF 1997 ON THE FILES OF THE MUNSIFF'S COURT, PARAPPANANGADI.

APPELLANTS/APPELLANTS/DEFENDANTS 1, 2, 4 TO 8, 10 AND 111:

1 P.KUNHIPPENNU, D/O.ANDY,
RESIDING AT CHERUKAVU AMSOM & DESOM, ERNAD TALUK.

2 P. KUTTAN, S/O.ANDY
RESIDING AT CHERUKAVU AMSOM & DESOM, ERNAD TALUK.

3 P. UNNI, S/O.ANDY
RESIDING AT CHERUKAVU AMSOM & DESOM,
ERNAD TALUK.

4 P. BABY D/O. ANDY
RESIDING AT CHERUKAVU AMSOM & DESOM, ERNAD TALUK.

5 P. GEETHA D/O. ANDY
RESIDING AT CHERUKAVU AMSOM & DESOM, ERNAD TALUK.

6 P. BALAKRISHNAN S/O. ANDY
RESIDING AT CHERUKAVU AMSOM & DESOM,
ERNAD TALUK.

7 P. RADHAKRISHNAN, S/O. ANDY
RESIDING AT CHERUKAVU AMSOM & DESOM,
ERNAD TALUK.

8 BINDU.C, D/O. PUTHUSSERI NARAYANAN
RESIDING AT CHERUKAVU AMSOM & DESOM,
ERNAD TALUK.

9 N. SHEEJA D/O. PUTHUSSERI NARAYANAN
RESIDING AT CHERUKAVU AMSOM & DESOM,
ERNAD TALUK.

BY ADVS.
SRI.KRISHNANUNNI, SR.COUNSEL
SMT.MEENA A.
SRI.K.C.KIRAN
SMT.P.A.SHEEJA
SRI.T.SIVADASAN

RESPONDENTS/RESPONDENTS/PLAINTIFF AND DEFENDANTS 3 AND 9:

1 P.V.PADMANABHAN, S/O. PUTHUSSERI UNICHUNDAN,
RESIDING AT CHERUKAVU AMSOM & DESOM,
ERNAD TALUK, PIN - 676 101.

2 P. CHANDRAN S/O. ANDY
RESIDING AT CHERUKAVU AMSOM & DESOM,
ERNAD TALUK, PIN - 676 101.

3 P. PUSHPARAJAN, S/O. KARUMATT PADMAVATHI AMMA,
THIRURANGADI AMSOM, TIRURANGADI TALUK - 676 306.

BY ADVS.
SRI.K.P. SUDHEER FOR R1
SRI.M.DEVESH FOR R2 AND R3
SRI.VINAY MATHEW JOSEPH

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12.03.2025, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

C. JAYACHANDRAN, J.

R.S.A. No.1112 of 2011

Dated, this the 10th day of April, 2025

JUDGMENT

The defendants, except defendant nos.3 and 9 in the suit O.S.No.294/1997 of the Munsiff's Court, Parappanangadi, are the appellants herein. Defendants 3 and 9, who were not available at the time of filing the second appeal, are made respondent nos.2 and 3 in this appeal. The plaintiff in the suit is the 1st respondent. The judgment and decree of the Munsiff Court, Parappanangadi, in O.S.No.294 of 1997, as confirmed by the first appellate Court (Sub Court, Manjeri) in A.S.No.6 of 2010, is under challenge herein.

2. The plaintiff in the suit, O.S.No.294 of 1997 (1st respondent herein), sought for a declaration that the decree passed in an earlier suit for partition -

O.S.No.143 of 1974, of the Munsiff's Court, Parappanangadi - is not binding on the plaintiff or the plaint schedule property. He also sought for a consequential injunction restraining the defendants from interfering with his possession of the plaint schedule property in purported execution of the said decree. As indicated earlier, the suit was decreed. The challenge carried therefrom was also dismissed and the defendants above referred are in appeal before this Court.

3. Heard the learned Senior counsel for the appellant and the learned counsel for the respondents. Perused the records.

4. Learned Senior counsel for the appellants would advance a three-pronged argument before this court. The first is the bar under Section 47 of the Code of Civil Procedure. According to the learned counsel, the issue pertains to the execution of the decree in the earlier

suit, O.S.No.143/1974, which has to be decided by the Court exceeding the decree. A separate suit as the one styled now (O.S.No.294 of 1997) is not maintainable.

5. The second contention is based on constructive *res judicata*. Learned counsel would submit that since – Janaki - the predecessor in interest of the plaintiff, P.V.Padmanabhan - was very much a party to the earlier suit, O.S.No.143 of 1974, all contentions which might and ought to have been raised by the said Janaki will be deemed to have been raised in that suit. Therefore, the present claim of the plaintiff, on the strength of Ext.A9, having not been pleaded and adjudicated in the earlier suit O.S.No.143 of 1974, will be hit by the principles of constructive *res judicata*.

6. The third argument raised is that Ext.A9 document, based upon which the plaintiff is claiming relief, is a fraudulent document. This argument is sought to be

substantiated by pointing out that Janaki, the predecessor in interest of the present plaintiff, had filed written a statement in a connected suit, O.S.No.36 of 1983, wherein a similar relief that the decree in O.S.No.143 of 1974 of the Munsiff Court, Parappanangadi, is not binding on the plaintiff therein, was sought for. In the written statement filed by Janaki, it was contended that she had assigned the property to one Kodamvetty Padmanabhan, who is not the present plaintiff. Based on the contention raised by the said Janaki, the said Kodamvetty Padmanabhan was impleaded as the additional 10th defendant in that suit (O.S.No.36 of 1983). He also filed a written statement claiming that he is the assignee of Janaki. In such circumstances, the title claimed by the present plaintiff, P.V.Padmanabhan - to whom no document is spoken to have been executed by Janaki - is based on a fraudulent document, which disentitles him from any of the relief sought.

7. Answering the above contentions, the learned counsel

for the 1st respondent/plaintiff would submit that the the partition deed produced at Ext.A6 between Unnikkoru and Aandy, was accepted by Aandy, and he filed written statement in the suit, O.S.No.143 of 1974, propounding Ext.A6 Partition Deed. The present defendants are the legal heirs of the said Aandy, and therefore, they cannot contend contrary to what Aandy contended in O.S.No.143 of 1974. In other words, they cannot dispute Ext.A6 Partition Deed, is the contention urged.

8. The second contention urged is that, despite Unnikkoru filing a written statement avering that his rights have been transferred to Janaki and one Imbichi (plaintiff in O.S.No.36 of 1983), the plaintiff in O.S.No.143/1974, have not chosen to implead the present plaintiff's predecessor, Janaki, in that suit. If that had been done, Janaki would have filed a written statement, specifically contending that the property had been sold to the present plaintiff, P.V. Padmanabhan, which would have solved the issue, without the present

plaintiff being relegated to the course of seeking a declaration that the decree in O.S. No. 143/1974 is not binding on him.

9. Thirdly, learned counsel contended that, at any rate, the judgment and decree in O.S.No.143/1974 cannot bind the plaintiff, who was admittedly not a party, especially when the plaintiff has a right over the property held by Unnikkoru originally, and thereafter by Janaki, under and by virtue of Ext.A9 document. The fact that Janaki was subsequently impleaded in that suit, O.S. No. 143/1974, only as a legal heir of Unnikkoru, cannot bind the plaintiff (1st respondent herein), is the contention raised. The learned counsel would submit that all the relevant aspects have been considered by the trial court, as well as the first appellate court, in the right perspective, which warrants no interference by this court. The learned counsel would hasten to add that Exts.A15 to A18 documents, which are the land tax receipts and building tax receipts, would indicate that

the plaintiff is in possession of the plaint schedule property, as well as the building therein. Learned counsel would conclude by submitting that the property scheduled in the plaint precisely identifies the properties covered by the Ext.A9 document executed by Janaki in favour of the plaintiff; and that by virtue of the Ext.A6 Partition Deed, the joint ownership between Unnikkoru and Aandy ceased to exist, with items 1 to 3 being allotted to the share of Unnikkoru and items 4 to 6, to the share of Aandy. It is those items 1 to 3, coupled with another item (not items 4, 5, and 6 assigned to Aandy) which is the subject matter of Ext.A9 document. Therefore, the appellants (defendants in the suit) cannot claim any ownership rights over the items of property scheduled in the plaint, which are items 1 to 3 described in Ext.A6 Partition Deed. On such premise, the learned counsel for the 1st respondent seeks dismissal of the second appeal.

10. The following substantial question of law is raised,

after hearing the learned counsel for the respective parties:

> In the backdrop of the attending facts, whether the impleadment of the plaintiff's predecessor in the earlier suit, O.S. No.143/1974, will bind the plaintiff in this suit (1st respondent herein), in the context of enforceability of the decree in O.S.No.143/1974 is concerned?

11. While addressing the issue, this Court will first record the undisputed facts. The landed property, having an extent of 1.30 acres in Survey No. 308/1 of Cherukavu Village, Kondotty Taluk, Malappuram District, originally belonged to 'Kozhikode Padinjarekkettu Thavazhi.' The property was vested with V.V. Krishnan Nair and his family by virtue of Ext. A2 Partition Deed, and it was allotted to the share of Sekharan Nair. When the property belonged to the family of V.V. Krishnan Nair, tenancy

rights in respect of 1.30 acres were given to one Kuttiperavan, as evidenced by Ext. A1 kaicheetu. After the property came into the hands of Sekharan Nair, the kanam rights in respect of the same were initially assigned by Sekharan Nair in favour of Janaki, the wife of the aforementioned Kuttiperavan, by virtue of Ext. A3 document. Janaki sold the kanam rights over the said property to one Vappukutty by virtue of Ext. A4 document. The same was returned to Janaki as per Ext.A5 document. In this regard, it is relevant to not that the above referred 1.30 acres is constituted of three thaks of property, having measurements of 34 x 45; 25.5 x 40; and 4.25 x 3.25, respectively.

12. Upon the death of the above said Kuttiperavan, the tenancy rights over the said property devolved upon his children, Unnikkoru and Aandy. By virtue of Ext.A6 document of the year 1970, partition was effected by and between Unnikkoru and Aandy, as per which, items 1 to 3 referred to in the said partition deed were allotted to

the share of Unnikkoru; and items 4 to 6, to the share of Aandy. As per Ext.A7 gift deed, Unnikkoru gifted his rights over items 1 to 3 afore referred, to his wife Janaki. It can thus be seen that both the kanam rights and tenancy rights in respect of items 1 to 3 became vested with Janaki. As per Ext.A8, the pattayam was also issued in favour of the said Janaki in the year 1977.

13. In the meantime, challenging Ext.A6 partition deed, one daughter of Kuttiperavan, by name Kalyani, filed a suit O.S.No.143 of 1974 (the decree of which is sought to be declared as not binding on the plaintiff in the instant suit). The said suit was decreed, which decree has become final. Accordingly, it is pertinent to note that the trial court found a right in favour of Kuttiperavan's wife, by name Acha. Along with Unnikkoru and Aandy, this right of Acha devolved upon Unnikkoru, Aandy and the daughters of Kuttiperavan and Acha, including Kalyani. Thus, a fractional right, which was found in favour of the plaintiff Kalyani in that suit by

the learned Munsiff, got ripened as a right recognisbale under Section 14 of the Hindu Succession Act.

14. It is at that juncture, that the instant suit, O.S. No.294/1997, was preferred by the plaintiff (1st respondent herein), seeking a declaration that the decree and judgment in O.S.No.143 of 1974 of the Munsiff's Court, Parappanangadi is not binding on the plaintiff, or for that matter, the plaint schedule property; and seeking further, an injunction restraining the defendants from interfering with the possession of the plaintiff, in execution of the said decree. It may incidentally be stated that the defendants in the suit O.S.No.294/1997 are the legal heirs of Aandy, and defendants 9 to 11 are subsequent assignees. It is also noted that there were no issues in the wedlock between Unnikkoru and Janaki. The declaration sought was specifically with respect to the property conveyed to the plaintiff, P.V.Padmanabhan, under and by virtue of Ext.A9 document, which properties are described as items 1 to 3 in Ext.A6 partition deed.

15. Before addressing the issue, one more fact is liable to be noted. A suit, O.S.No.36/1983, was instituted by an assignee of Unnikkoru, by name Imbichi, before the Munsiff Court, Parappanangadi, wherein a similar relief was sought for, to the effect that the decree and judgment in O.S.No.143 of 1974, of the Munsiff's Court, Parappanangadi, is not binding on the plaintiff in that suit. It is relevant to note that Unnikkoru executed two documents on the same date, of which one is Ext.A7 gift deed in favour of Janaki; and other is a document assigning property to Imbichi, the plaintiff in O.S.No.36/1983. The said suit, O.S.No.36/1983, was dismissed by the court of first instance. However, the judgment was reversed and allowed by the first appellate court, as per which, a declaration to the effect that the judgment and decree in O.S.No.143 of 1974 of the Munsiff's Court, Parappanangadi, is not binding on the plaintiff in O.S.No.36 of 1983 was granted. The said judgment has become final. This fact is referred to only

for the reason that the present plaintiff is on similar footing as Imbichi and that a similar relief is sought for in the instant suit, O.S.No.294 of 1997 as well.

16. In addressing the core issue, this court may have to first analyze the impact re Ext.A6 partition deed. At the cost of repetition, it must be noted that Ext. A6 was executed between Unnikkoru and Aandy, under which Unnikkoru was allotted the property described as item Nos. 1 to 3, and Aandy, the property described as item Nos. 4 to 6. The fact that Ext.A6 partition deed is accepted by Aandy is decipherable from Ext.A21 document, which is a counter filed by Aandy in the final decree application preferred by the plaintiff in O.S.No.143 of 1974, as admitted in paragraph No.2. If that be so, it is difficult to conceive that the legal heirs of Aandy (the defendants in the instant suit) can contend otherwise. If Ext.A6 is valid, then Unnikkoru should be presumed to be the legitimate owner of item Nos.1 to 3 to Ext.A6 (plaint schedule property). That being so, he was well within his

limits in executing Ext.A7 gift deed to Janaki, which is only in respect of the property which has been allotted to his share; and not in respect of any property allotted to Aandy, so as to enable the present defendants to pick up a controversy over the same. If Janaki became the owner of the said items 1 to 3 (plaint schedule property), she is also within her limits to execute Ext.A9 in favour of the plaintiff in the present suit. Janaki was also equipped by Annexure-A8 pattayam issued in her favour. Thus, as on 27.03.1979, the date of Ext.A9, the present plaintiff claims complete ownership over the plaint schedule property.

17. This Court notice that the preliminary decree in O.S.No.143 of 1974 was passed on 05.09.1980, and the predecessor in interest of the present plaintiff was impleaded only at the final decree stage, in the year 1982. It appears that no statement has been filed by Janaki in the final decree proceedings pointing out the sale of the property in favour of the present plaintiff.

18. This Court will now consider whether the principle of lis pendens is attracted in the given facts. In O.S.No.143 of 1974, Janaki's husband, Unnikkoru, was a party as 1st defendant. He filed a written statement contending that he executed Ext.A7 gift deed in favour of Janaki. However, the plaintiff therein has not sought for the impleadment of Janaki in the suit. It could thus be seen that Janaki was not a party in O.S.No.143 of 1974, even as on the date of passing the preliminary decree. She became a party after the death of Unnikkoru, as his legal heir only; and not as a person who had obtained title over the property under Ext.A7 during the lifetime of Unnikkoru. In the said circumstances, it cannot be said that the present transaction is hit by the principle of *lis pendens*. The plaintiff in that suit had abundant opportunity to implead Janaki as an additional defendant, which, however, was not done. If Janaki was made a party, the decree would bind Janaki, the same would automatically bind the present plaintiff as well, which factual scenario does not exist. Therefore, the

contention of *lis pendens* will stand dismissed.

19. Another aspect which is taken note of by this court is that the decree in O.S.No.143 of 1974 is in favour of Kalyani, the plaintiff therein. If a third person, like the present plaintiff (claiming under Ext.A9) seeks a declaration to the effect that the judgment and decree in that suit (O.S.No.143 of 1974) is not binding upon him, the essential person who can object to such a declaration is the plaintiff in that suit; and not the present defendants, the legal heirs of Aandy, who was the 2nd defendant in O.S.No.143 of 1974. This is all the more so when Aandy, who was examined in that suit, had specifically deposed about Ext.A6 partition deed between Unnikkoru and Aandy, as per which, items 1 to 3 were allotted to the former; and items 4 to 6 to the latter.

20. Coming to the contention of constructive res judicata, this court finds that, inasmuch as neither

Janaki nor the present plaintiff (P.V.Padmanabhan) were parties to the suit O.S.No.143 of 1974, the principle of constructive *res judicata* cannot be pressed into service. It is reiterated and noted that Janaki became a party only at the final decree stage, which only pertains to the physical division of the property in terms of the shares allotted vide the preliminary decree.

21. As regards the contention that the document is fraudulent in view of the written statement filed by Janaki in O.S.No.36 of 1983, this Court is not in the least impressed. There, Janaki filed a written statement to the effect that the property has been sold to one Kodamvetty Padmanabhan, who was impleaded as additional 10th defendant in that suit. He also filed a written statement in tune with the contentions of Janaki, who was the 9th defendant in that suit. Primarily, it is noticed that the subject matter, in terms of the property involved, in the suit O.S.No.36 of 1983, is different from the subject matter in O.S.No.143 of 1974. This fact

is decipherable from Ext.A18 decree in the suit O.S.No.36 of 1983. Therefore, we are not in a position to ascertain whether there has been an assignment in favour of Kodamvetty Padmanabhan, as claimed by Janaki. Secondly, it is noted that no document has been produced by the additional 10th defendant in that suit, by name Kodamvetty Padmanabhan, so as to ascertain whether the claim made by Janaki is correct or not. Thirdly, this Court notice that the present plaintiff, P.V.Padmanabhan, has approached the jurisdictional civil court claiming title over the property, supported by the title deed, Ext.A9. The credentials of the plaintiff would tally with the description stated in Ext.A9. If that be so, no adverse finding can be made against the present plaintiff, P.V.Padmanabhan, on the basis of written statement filed in another proceedings, O.S.No.36 of 1983, wherein the present plaintiff, P.V.Padmanabhan, was not a party and wherein the said Kodamvetty Padmanabhan had not produced any document of title in support of his claim. At any rate, for that reason in respect of the discrepancy

between the names, Ext.A9 cannot be frowned upon, much less, held as fraudulent. That contention will also stand repelled.

22. Learned Senior Counsel appearing for the appellants raised one final contention, which is more or less in the nature of an apprehension, of a confusion being created by the decree being confirmed, unless clarified. Learned Senior Counsel would point out that the partition between Unnikkoru and Andy by virtue of Ext.A6 document was put to challenge at the instance of the daughter of Kuttiperavan by name Kalyani, in which suit, other female children of the said Kuttiperavan were defendants. The suit was decreed. It was held that Unnikkoru, Andy and the wife of Kuttiperavan had share in the property pursuant to the death of Kuttiperavan. As a matter of fact, the right of the wife of Kuttiperavan recognised was in the context of maintenance, which right got enlarged as complete rights by virtue of Section 14 of the Hindu Succession Act. Upon the death of the wife of

Kuttiperavan, the rights which his wife had devolved upon all the children including the female children, as also, on the children of a daughter, who predeceased the wife of Kuttiperavan. By virtue of the decree granted in O.S.No.143/1974, Ext.A6 partition deed was set aside and a preliminary decree was passed recognising 8/28 shares on Unnikkoru, 16/28 on Andy and the remaining 4/28 to the daughter of Kuttiperavan. In the wake of the above facts, it is the submission of the learned Senior Counsel that Unnikkoru had not obtained complete rights in items 1 to 3 specified in Ext.A6 partition deed; instead, he could obtain only 8/28 shares in the said items of properties. Learned Senior Counsel would hasten to add that separate possession of the properties were not granted in the Final Decree Application as well. Instead, the final decree also recognises the respective shares of the parties in all the items of properties, which fact situation would only reiterate the contention that Unnikkoru had only 8/28 shares in items 1 to 3 specified in Ext.A6 partition deed. If that be so, Janaki, under

Ext.A7 gift deed, can obtain only the said 8/28 shares and consequently, the plaintiff also could obtain the said rights, which Unnikkoru had in the plaint schedule property. In short, the submission is that the plaintiff is not entitled to the complete rights and ownership over the plaint schedule property. His rights are limited to 8/28 shares therein, which Unnikkoru had.

23. Learned counsel for the 1st respondent/plaintiff advanced his arguments based on Ext.A11, wherein there are as many as six items, of which the plaint schedule property is only one item, so that the rights of Unnikkoru can be confined to the plaint schedule property.

24. The arguments of the learned Senior Counsel has apparent merits. However, this Court notice that the above contention urged by the learned Senior Counsel that Unnikkoru does not have complete rights over the

properties, especially when the partition has been set at naught by the decree in the previous suit, is not seen raised as a contention in the written statement filed by the defendants, including the assignees of the children of Andy. This contention is raised for the first time in this second appeal. I am, therefore, of the opinion that a definite finding is in this regard is not liable to be entered into. This is more so, in view of the relief sought for in the instant suit, that is to say, a declaration that the partition decree in O.S.No.143/1974 is not binding on the plaintiff or on the plaint schedule property and also a consequential injunction. The partition decree in O.S.No.143/1974 canot bind the plaintiff, since Janaki was not made a party in that suit, despite Unnikkoru filing a written statement to the effect that his rights in the properties involved in the suit have been gifted to Janaki. However, the contentions urged by the learned Senior Counsel that, all what Janaki can obtain under the Ext.A7 gift deed is the rights which Unnikkoru had in the property merits consideration, but

in a properly constituted suit, with all the parties in the party array. This Court therefore is not inclined to disturb the findings of the trial court that the partition decree in O.S.No.143/1974 will not bind the plaintiff and the property in his possession, however, leaving open the question as to what rights precisely the plaintiff obtained by virtue of Ext.A9 document. As regards the injunction, it is clarified that the injunction is allowed restraining the defendants from interfering with the possession of the plaint schedule property by the plaintiff, in purported execution of the decree in O.S.No.143/1974.

The Appeal will stand dismissed.

Sd/-

C.JAYACHANDRAN, JUDGE

ww/mea