



2024:KER:86929

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

WEDNESDAY, THE 20TH DAY OF NOVEMBER 2024 / 29TH KARTHIKA, 1946

RFA NO. 313 OF 2003 (B)

AGAINST THE JUDGMENT AND DECREE DATED 31.05.2003 IN OS NO.620

OF 1998 OF I ADDITIONAL SUB COURT, ERNAKULAM

APPELLANT/PLAINTIFF NO.1:

1 P. J. JOHN, (DIED;LRs IMPEADED) *¹
S/O VARU JOSEPH, PALAKKAPPILLY, NEAR OEN COMPANY,
THEKKUMBAGAM, TRIPUNITHURA. PO, ERNAKULAM.

*¹ ADDITIONAL APPELLANTS A2 TO A6

ADDL.A2 PONNAMMA JOHN,
W/O LATE P.J. JOHN, PALAKKAPPILLIL HOUSE, THEKKUMBHAGAM,
MONIPILLY ROAD, TRIPUNITHURA P.O.

ADDL.A3 JOSEPH JOHN,
S/O. LATE P.J. JOHN, PALAKAPILLIL, THEKUMBHAGAM,
PANACKAL ROAD, TRIPUNITHURA P.O.

ADDL.A4 JACOB JOHN,
S/O. LATE P.J. JOHN, PALAKAPILLIL, PALACE AVENUE, COCHIN
PALACE P.O., HILL PALACE, TRIPUNITHURA P.O.

ADDL.A5 JHONSON JOHN,
S/O LATE P.J. JOHN, PALAKAPPILLIL, THEKUMBHAGAM,
MONIPILLY ROAD, TRIPUNITHURA P.O.

ADDL.A6 MAYMOLE MATHEW,
D/O LATE P.J. JOHN, VAZHATHARA HOUSE, UDAYAMPEROOR. PO
VAKOM ROAD, NADAKAVU.



*¹[LEGAL REPRESENTATIVES OF DECEASED APPELLANT ARE IMPEADED AS ADDL. A2 TO A6 AS PER ORDER DATED 01.04.2014 IN IA 415/2008]

BY ADVS.
A.R.DILEEP
GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
KAVITHA GANGADHARAN

RESPONDENT/DEFENDANTS 1 TO 10 AND PLAINTIFF NO.2:

- 1 P. J. GEORGE, (DIED; LRS RECORDED) *³
S/O VARU JOSEPH, PALAKKAPPILLIL HOUSE, KESAVAN PADI,
THIRUVANKULAM, ERNAKULAM DISTRICT.

*³[IT IS RECORDED THAT R1 DIED AND THAT THE APPELLANTS ARE EXEMPTED FROM IMPEADING LEGAL REPRESENTATIVES OF DECEASED R1 AS PER ORDER DATED 01/04/2014 IN IA 1714/2013]

- 2 P. J. JOSEPH,
S/O VARU JOSEPH, PALAKKAPPILLY HOUSE, OPP. ST LURD
CHURCH, PERUMANOOR, ERNAKULAM DISTRICT, KOCHI-15.
- 3 CDR. JOSEPH MATHEW,
S/O VARU JOSEPH, PALAKKAPPILLIL HOUSE, 1/2 A SYDNEY
STREET, JAKAPUNA, AUCKLAND 1309, NEWSEALAND.
- 4 P. J TOMY, (DIED; LRS IMPEADED)*⁵
S/O VARU JOSEPH, PALATHINGAL APARTMENTS, CANAL CROSS
ROAD, PERUMANOOR, ERNAKULAM DISTRICT, KOCHI-15.
- 5 JOSEPH XAVIER PALAKKAPPILLIL (INSANE) (DIED; LRS IMPEADED) *²
PLAKKAPPILLIL HOUSE, POPE PAUL MERCY HOME, SANTHIVANAM,
ASHA NILAYAM, PERIINGADOOR, THRISSUR DISTRICT,
REPRESENTED BY GUARDIAN FR. VARGHESE PALATHINKAL, POPE
PAUL MERCY HOME, SANTHIVANAM, ASHA NILAYAM,
PERINGADOOR, THRISSUR DIST.

*²[IT IS RECORDED THAT R5 PASSED AWAY AND THAT APPELLANT (DIED) AND R3, R4, R6, R7 & R11 (ALREADY IN PARTY ARRAY) ARE THE LEGAL REPRESENTATIVES OF DECEASED R5, AS PER ORDER DATED 01/04/2014 IN MEMO DATED 15/07/2013 (VIDE CF NO.3924/2013)]

- 6 KIRAN G., ARORA @ MARIAMMA,
D/O. VARU JOSEPH, A-602/4 MILTONS APARTMENTS, JUHU AZAD
ROAD, BOMBAY - 400049.



- 7 ANU BABU,
D/O. VARU JOSEPH, VAGAPPALLY HOUSE, KOCHUPALLY ROAD,
THOPPUMPADY, ERNAKULAM DISTRICT, KOCHI-5.
- 8 K.A. KUTTY MOOSA,
PANDAREKOTTIL HOUSE, ERAMALLOOR, CHERTHALA TALUK.
- 9 MRS. CICILY MAMMEN, (DIED;LRS IMPEADED) *⁴
PUTHENPURAYIL HOUSE, H.NO.XXVIII/1786, AMALA BHAVAN
ROAD, KADAVANTHRA , KOCHI-682 020.
- 10 P.M.PAUL,
S/O VIJU PAUL, PALLATHITTAYIL HOUSE, H.NO.3631, MAKKAR
LANE, PERUMANNUR, KOCHI-682 015.
- 11 TRESAMMA GEORGE,
D/O. VARU JOSEPH, 113, PALLAVAN NAGAR, MADURAVOYAL,
CHENNAI-602 102.

*⁴ ADDITIONAL R12 TO R16 IMPEADED

- ADDL. R12 BEENA JOSE,
AGED 63 YEARS, W/O.K.C.JOSE, KALAPARAMBATHU,
KARUMALLOOR P.O., KARUMALLOOR-683511, ERNAKULAM
DISTRICT.
- ADDL. R13 NEENA JOB,
AGED 60 YEARS, W/O.JOB V POTTAYIL, POTTAS HOUSE,
S.MARADY P.O., MUVATTUPUZHA -686673.
- ADDL. R14 LEENA SOJU,
AGED 57 YEARS, W/O.SOJU JOSEPH PUNNOSE, KOZHUPPAKALAM
HOUSE, S.M.S NAGAR, VELLAYAMBALAM,
THIRUVANANTHAPURAM - 690 510.
- ADDL. R15 SHEENA JORDY,
AGED 52 YEARS, W/O M.A.JORDY, MANNATHUKKARAN HOUSE,
MUVATTUPUZHA P.O., MUVATTUPUZHA -686661.
- ADDL. R16 SONA P.MAMMEN,
AGED 50 YEARS, PUTHENPURAYIL HOUSE, H.NO.XXVIII/1786,
AMALA BHAVAN ROAD , KADAVANTHRA, KOCHI -682020.

*⁴[LEGAL HEIRS OF THE DECEASED R9 ARE IMPEADED AS ADDL. R12 TO
R16, AS PER ORDER DATED 19.01.2024 IN IA NO.1/2023]

*⁵ ADDITIONAL R17 TO R18

ADDL. R17 ALICE TOMY, W/O LATE P.J.TOMY, PALATHINGAL APARTMENTS,
CANAL CROSS ROAD, PERUMANOOR, ERNAKULAM DISTRICT,
KOCHI-682015.

ADDL. R18 MUNNU JOSE TOMY, S/O LATE P.J.TOMY, PALATHINGAL
APARTMENTS, CANAL CROSS ROAD, PERUMANOOR, ERNAKULAM
DISTRICT, KOCHI-682015.

*⁵ [THE LEGAL REPRESENTATIVES OF THE DECEASED FOURTH RESPONDENT ARE
IMPLEADED AS ADDITIONAL RESPONDENTS R17 AND R18 AS PER ORDER DATED
24.09.2024 IN IA NO.1 OF 2024 IN RFA 313 OF 2003]

BY ADVS.

JACOB SEBASTIAN	- R1
PRAVEEN K. JOY	- R1
C. VARGHESE KURIAKOSE	- R1
GEORGE A.CHERIAN	- R4
LATHA SUSAN CHERIAN	- R4
GEORGE CHERIAN (SR.) (G-81)	- R4
ABRAHAM C I	- R3 & R7
K.G.BALASUBRAMANIAN	- R3 & R7
GEORGE KARITHANAM VARGHESE	- R3 & R7
THOMAS P. KURUVILLA	- R2
KESAVA KAIMAL	- ADDL. R13
DEVIKA RANI KAIMAL	- ADDL. R13

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON
20.11.2024, ALONG WITH RFA.362/2003, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



2024:KER:86929

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

WEDNESDAY, THE 20TH DAY OF NOVEMBER 2024 / 29TH KARTHIKA, 1946

RFA NO. 362 OF 2003

AGAINST THE JUDGMENT AND DECREE DATED 31.05.2003 IN OS NO.620
OF 1998 OF I ADDITIONAL SUB COURT, ERNAKULAM

APPELLANT/PLAINTIFF NO.2:

THRESSAMMA GEORGE, AGED 54, W/O GEORGE & D/O LATE VARU
JOSEPH, RESIDING AT 113, PALLAVAN NAGAR, MADURAVOYAL,
CHENNAI.

BY ADVS.
SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN
SRI.PRAVEEN K. JOY
SRI.M.A.RASHEED

RESPONDENTS/DEFENDANTS 1 TO 10 & PLAINTIFF NO.1:

- 1 P. J. GEORGE, [DIED; ADDL. RESPONDENTS 12 TO 15 IMPEADED]*¹
S/O.VARU JOSEPH, PALAKKAPPILLIL HOUSE, KESAVAN PADI,
THIRUVAMKULAM, ERNAKULAM DIST.
- 2 P. J. JOSEPH
S/O.VARU JOSEPH, PALAKKAPPILLY HOUSE, OPP.ST.LURD
CHURCH, PERUMANOOR, ERNAKULAM DISTRICT, KOCHI-15.
- 3 CDR JOSEPH MATHEW
S/O.VARU JOSEPH, PALAKKAPPILLIL HOUSE, 1/2A SYDNEY
STREET, JAKAPUNA AUCKLAND 1309, NEWZELAND.
- 4 P. J. TOMY [DIED; LRS IMPEADED]*⁶
S/O.VARU JOSEPH, PALATHINGAL APARTMENTS, CANAL CROSS
ROAD, PERUMANOOR, ERNAKULAM DISTRICT, KOCHI-15.



- 5 JOSEPH XAVIER PALAKKAPPILLIL (INSANE) [DIED] *³
PALAKKAPPILLIL HOUSE POPE PAUL MERCY HOME SANTHIVANAM
ASHA NILAYAM, PERINGADOOR, THRISSUR DISTRICT, REP.BY
GUARDIAN FR. VARGHESE PALATHINKAL, POPE PAUL MERCY HOME
SANTHIVANAM, ASHA NILAYAM PERINGADOOR, THRISSUR
DISTRICT.

*³ [IT IS RECORDED THAT R5 DIED AND APPELLANT, RESPONDENT
NOS.2,3,4,6 AND 7 ARE LEGAL REPRESENTATIVES OF DECEASED R5 VIDE
ORDER DATED 01.04.2014 AND VIDE MEMO DATED 16.07.2013.]

- 6 KIRAN.G.ARONA @ MARIAMMA
D/O.VARU JOSEPH, A-602/4 MILTONS APARTMENTS, JUHU AZAD
ROAD, BOMBAY-400 049

- 7 ANU BABU
D/O.VARU JOSEPH, VAGAPPALLY HOUSE KOCHUPALLY ROAD
THOPPUMPADY, ERNAKULAM DISTRICT, KOCHI-5.

- 8 K.A.KUTTY MOOSA [DIED] *⁵
PANDAREKOTTIL HOUSE, ERAMALLOOR, CHERTHALA TALUK.

*⁵ [THE IMPLEADMENT OF LEGAL HEIRS OF DECEASED R8 IS DISPENSED WITH
AT THE RISK OF THE APPELLANTS VIDE ORDER DATED 09/07/2024 IN IA
1/2024 IN RFA 362/2003.]

- 9 MRS.CICILY MAMMEN, [DIED; LRS IMPLEADED AS ADDL. R21 TO R25] *⁴
PUTHENPURAYIL HOUSE, HOUSE NO XXVIII/1786 [AMALA BHAVAN
ROAD, KADAVANTHRA, KOCHI-20.

- 10 VIJU PAUL,
S/O.P.M.PAUL PALATHINKAL HOUSE, H.NO.3631, MAKKAR LANE
PERUMANOOR.

- 11 P.J.JOHN, [DIED; ADDL. R16 TO 20 IMPLEADED] *²
S/O.VARU JOSEPH, PALAKKAPPILLY HOUSE, NEAR OEN COMPANY
THEKKUMBHAGAM, TRIPUNITHURA P.O., ERNAKULAM.

*¹ ADDITIONAL RESPONDENTS R12 TO R15

ADDL.R12 CHINNAMMA GEORGE,
W/O. LATE P.J.GEORGE, PALAKKAPPILLIL HOUSE,
KESAVANPADI, THIRUVAMKULAM, ERNAKULAM.



ADDL.R13 CIGI VINU
D/O.LATE P.J.GEORGE, PALAKKAPPILLIL HOUSE, KESAVANPADI,
THIRUVAMKULAM, ERNAKULAM.

ADDL.R14 CIBI GEORGE
D/O.LATE P.J.GEORGE, PALAKKAPPILLIL HOUSE, KESAVANPADI,
THIRUVAMKULAM, ERNAKULAM.

ADDL.R15 CIJO GEORGE,
S/O. LATE P.J.GEORGE, PALAKKAPPILLIL HOUSE,
KESAVANPADI, THIRUVAMKULAM, ERNAKULAM.

*¹ [ADDL.RESPONDENTS 12 TO 15 ARE IMPEADED AS LEGAL HEIRS OF
DECEASED R1 VIDE ORDER DATED 01.4.2014 IN IA No.1719/13]

*² ADDITIONAL RESPONDENTS 16 TO 20 IMPEADED

ADDL.R16 PONNAMMA JOHN,
W/O.LATE P.J.JOHN, PALAKKAPPILLY HOUSE, NEAR OEN
COMPANY, THEKKUMBHAGAM, TRIPUNITHURA, ERNAKULAM.

ADDL.R17 JOSEPH JOHN,
S/O.LATE P.J.JOHN, PALAKKAPPILLY HOUSE, NEAR OEN
COMPANY, THEKKUMBHAGAM, TRIPUNITHURA, ERNAKULAM.

ADDL.R18 JACOB JOHN,
S/O.LATE P.J.JOHN, PALAKKAPPILLY HOUSE, NEAR OEN
COMPANY, THEKKUMBHAGAM, TRIPUNITHURA, ERNAKULAM.

ADDL.R19 JOHNSON JOHN.
S/O.LATE P.J.JOHN, PALAKKAPPILLY HOUSE, NEAR OEN
COMPANY, THEKKUMBHAGAM, TRIPUNITHURA, ERNAKULAM.

ADDL.R20 MAYMOL MATHEW,
D/O.LATE P.J.JOHN, PALAKKAPPILLY HOUSE, NEAR OEN
COMPANY, THEKKUMBHAGAM, TRIPUNITHURA, ERNAKULAM.

*² [ADDITIONAL RESPONDENTS 16 TO 20 ARE IMPEADED AS LEGAL HEIRS OF
DECEASED R11 VIDE ORDER DATED 01.04.2014 IN IA NO.1719/2013]



*⁴ ADDITIONAL RESPONDENTS 21 TO 25

ADDL.R21 BEENA JOSE,
AGED 63 YEARS
W/O K.C. JOSE, KALAPARAMBATHU, KARUMALLOOR P.O.,
KARUMALLOOR, ERNAKULAM DISTRICT -683511.

ADDL.R22 NEENA JOB,
AGED 60 YEARS
W/O JOB V., POTTAYIL, POTTAS HOUSE, S.MARADY P.O.,
MUVATTUPUZHA-686673.

ADDL.R23 LEENA SOJU,
AGED 57 YEARS,
W/O SOJU JOSEPH PUNNOSE, KOZHUPPAKALAM HOUSE, SMS
NAGAR, VELLAYAMBALAM, THIRUVANANTHAPURAM- 690510.

ADDL.R24 SHEENA JORDY,
AGED 52 YEARS, W/O M.A. JORDY, MANNATHUKKARAN HOUSE,
MUVATTUPUZHA P.O. MUVATTUPUZHA- 686661.

ADDL.R25 SONA P MAMMEN,
AGED 50 YEARS
C/O BEENA JOSE, KALAPARAMBATHU, KARUMALLOOR P.O.,
KARUMALLOOR-, ERNAKULAM DISTRICT- 683511.

*⁴[THE LEGAL REPRESENTATIVES OF DECEASED 9TH RESPONDENT IS
IMPLEADED AS ADDITIONAL RESPONENT NOS.21 TO 25 IN IA NO.1/2023
VIDE ORDER DATED 19/01/2024]

*⁶ ADDITIONAL RESPONDENTS R26 AND R27

ADDL.R26 ALICE TOMY, AGED 74 YEARS,
W/O LATE P.J.TOMY, PALAKKAPPILLY HOUSE, KASTURBA NAGAR,
PERUMANOOR, THEVARA-682013.

ADDL.R27 MUNNU JOSE TOM, AGED 34 YEARS,
S/O LATE P.J.TOMY, PALAKKAPPILLY HOUSE, KASTURBA NAGAR,
PERUMANOOR, THEVARA-682013.



*⁶ [THE LEGAL HEIRS OF THE DECEASED 4TH RESPONDENT ARE IMPEADED AS ADDITIONAL RESPONDENTS R26 AND R27 VIDE ORDER DATED 24.09.2024 IN IA 3/2024 IN RFA 362/2003]

BY ADVS.

THOMAS P. KURUVILA	- FOR R2
GEORGE CHERIAN	- FOR R4
GEORGE K VARGHESE, V.J.JOHN, JOSEPH A VADAKEL, JOSE KURIAKOSE, } C.J. ABRAHAM	- FOR R7
GEORGE KARITHANAM VARGHESE	- R3
GEORGE K. VARGHESE, K.G.BALASUBRAMANIAN, } C.J. ABRAHAM	- JOINT VAKALATH FOR R3 AND R7
GEORGE VARGHESE PERUMPALLIKUTTIYIL, } V.P.K. PANICKER	- FOR R11
PAULSON C. VARGHESE, ARUN PRASANTH C	- FOR R9
A.R.DILEEP, SHARATH KUMAR K.J., MANU SEBASTIAN, } GEORGE VARGHESE PERUMPALLIKUTTIYIL	- FOR R16 TO R20
V.R.KESAVAKAIMAL, DEVIKA RANI KAIMAL	- FOR R22
GEORGE A CHERIAN, LATHA SUSAN CHERIAN	- FOR R26 AND R27

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 20.11.2024, ALONG WITH RFA.313/2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2024:KER:86929

C. R.

SATHISH NINAN &
P.V.BALAKRISHNAN, JJ.

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R.F.A. Nos.313 & 362 of 2003

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Dated this the 20th day of November, 2024

J U D G M E N T

Sathish Ninan, J.

These appeals are by the plaintiffs 1 and 2 respectively, in a suit for partition. The suit was dismissed by the trial court.

2. The properties sought to be partitioned belonged to late Varu Joseph(hereinafter referred to as “Varu”). The first plaintiff, and defendants 1 and 2, are the children born to Varu in his first wife Thresiyamma. The second plaintiff and defendants 3 to 7 are the children born to Varu in his second wife Annakutti. Varu died on 12.12.1972. Thresiyamma died on 10.08.1940. Annakutti died on 17.01.1975. The suit is filed seeking partition alleging intestate succession.

3. The suit was resisted by defendants 3, 4 and 7. In their written statement, the claim of the first



-: 2 :-

plaintiff for partition was defended relying on Ext.B1 Settlement Deed dated 28.11.1959, executed by Varu Joseph in favour of the children born in the first marriage viz. the first plaintiff, first defendant and second defendant. It was contended that the settlement of properties under Ext.B1 was in lieu of their shares in the father's property. Having accepted Ext.B1, they are estopped from claiming any further rights over the plaint schedule properties which are the remaining properties of the father, was the contention.

4. With regard to the claim of the second plaintiff, it was contended that the share due to her was provided at the time of her marriage. All the other children of Varu Joseph in the second marriage, viz. defendants 3 to 7, had executed Ext.B2 Partition Deed on 27.06.1981. Therein, the factum of the second plaintiff having been provided with her share and the consequent



-: 3 :-

non-allotment of any properties to her was specifically narrated. The second plaintiff had acknowledged and affirmed the above in Ext.B3 Sale Deed executed by the 7th defendant in favour of a third party, who is impleaded in the suit as the 9th defendant. The second plaintiff had joined in Ext.B3 Sale Deed for such purpose. Therefore, the claim for partition by the second plaintiff cannot be sustained, it was contended. A plea of adverse possession and ouster was also urged. So also, a counterclaim was raised seeking partition of the properties covered under Ext.B1 claiming that, if Ext.B1 is found to be void the said properties are also liable to be partitioned.

5. The trial court held that, by virtue of Ext.B1, the claim of the first plaintiff cannot be sustained. The claim of the second plaintiff was negatived relying on the recitals in Exts.B2 and B3 documents. The suit



-: 4 :-

and the counterclaim were dismissed. Plaintiffs 1 and 2 filed separate appeals. There is no appeal challenging the dismissal of the counterclaim.

6. We have heard Sri.George Varghese Perumpallikuttiyil, the learned counsel for the first plaintiff-appellant, Sri.Varghese Kuriakose, the learned counsel for the second plaintiff-appellant, Sri.George Cherian, the learned Senior Counsel, Sri. K. G. Balasubramaniyan and Sri. V.R.Kesava Kaimal on behalf of the contesting respondents.

7. The points that arise for determination in these appeals are: -

(i) Was the trial court right in having negated the claim of the first plaintiff, by relying on Ext.B1 Settlement Deed?

(ii) Was the trial court right in upholding the relinquishment of rights under Ext.B1, in the light of Section 6(a) of the Transfer of Property Act?



-: 5 :-

(iii) Was the trial court right in having negated the claim of the second plaintiff by holding that under Exts.B2 and B3 documents she had acknowledged relinquishment of her rights?

8. Ext.B1 is the Settlement Deed of the year 1959. It was executed by Varu, the father of the plaintiffs and defendants 1 to 7. It is executed in favour of the first plaintiff and defendants 1 and 2 who are the children born to him in his first wife. Ext.B1 recites that the properties thereunder are settled in favour of the first plaintiff and defendants 1 and 2 in lieu of the share which they would normally inherit from their father. Therefore, in the light of Ext.B1 settlement deed, the claim for partition made by the first plaintiff cannot be maintained, is the defence.

9. The learned counsel for the first plaintiff would on the other hand contend that Section 6(a) of the



-: 6 :-

Transfer of Property Act stipulates that a mere right of succession cannot be alienated. Therefore, Ext.B1 cannot be held against the first plaintiff to contend that his right of inheritance from his father has been lost thereunder.

10. Section 6(a) of the Transfer of Property Act reads thus:-

“What may be transferred- Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,-

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;”

Therefore, a *spes successionis* ie. a mere chance of inheritance cannot be alienated. It is not a transferable property. However, there is a well recognised exception to the same. In *Gulam Abbas v. Haji Kayyum Ali [1973 (1) SCC 1]*, the Apex Court held that if the chance of inheritance is relinquished either by way of a



-: 7 :-

family settlement or by accepting consideration towards the share, then it would operate as estoppel against the expectant heir to thereafter claim any share in the estate of the deceased. The above proposition was reiterated by the Apex Court in *Shehammal Vs. Hasan Khani Rawther and Ors. [AIR 2011 SC 3609]*. The Apex Court held :-

“However, notwithstanding the above, as we have held hereinbefore, the doctrine of estoppel is attracted so as to prevent a person from receiving an advantage for giving up of his/her rights and yet claiming the same right subsequently. In our view, being opposed to public policy, the heir expectant would be estopped under the general law from claiming a share in the property of the deceased, as was held in Gulam Abbas case (1973) 1 SCC1, AIR 1973 SC 554.”

The judgment of the Apex Court in *Gulam Abbas case* (supra) was relied on by this Court in various judgments including *Damodaran Kavirajan and Ors. vs. T.D. Rajappan [AIR 1992 Ker 397]*, *Jameela Beevi v. Basheer and Ors. [2012 (2) KHC 16]* and *R. Subbaraj v. S. Pandiyammal & Anr. [2013 (4) KLT 872]*. This Court held thus:



“There is no doubt that ordinarily there cannot be a transfer of spes successionis, but there may be exceptions which may be covered by a deed of family settlement or a deed of arrangement executed after receiving consideration for a future share, in which case, it would operate as estoppel against the expectant heir who claims any share in the estate of the deceased.”

11. The learned counsel for the first plaintiff would argue that, if at all estoppel is to apply, the expectant heir should have executed a release deed, releasing such chance of inheritance. Such rights having not been conveyed in the instant case, the principle as laid down in the above decisions would not apply, it is argued.

12. The argument is not well founded. By execution of a release deed by the expectant heir, there could not be the transfer of any rights because such right did not exist. It is the representation of the



-: 9 :-

expectant heir, after having received consideration in lieu of share, that he will not claim any share in the future, leading the transferor/predecessor to believe such representation, and his future conduct in not having made any bequest excluding such expectant heir, which would operate as estoppel. Section 115 of the Indian Evidence Act, 1872 defines estoppel thus,

“115. Estoppel.—When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

As is evident therefrom, if a person, by his declaration, act or omission, made another person to believe a thing to be true, and such other person acted upon such representation, then the person making such representation shall not be allowed to resile from such representation. In *Sunderabai and Another v. Devaj Shankara*



-: 10 :-

Deshpande (AIR 1954 SC 82) the Apex Court explained the doctrine of Estoppel thus:

“Estoppel is a rule of evidence and the general rule is enacted in S. 115 of the Indian Evidence Act, 1872 (in short 'Evidence Act') which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. ”

13. In ***B.L.Sreedhar and Ors. v. K.M.Munireddy (Dead) an Ors. [2003 (2) SCC 355]***, the Apex Court held,

“ Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Indian Evidence Act, 1872 (in short “the Evidence Act”) which lays down that when one person has by his declaration, act or omission caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. (See Sunderabai v. Devaji Shankar Deshpande AIR 1954 SC 82).”

In ***Elumalai @ Venkatesan v. M.Kamala (AIR 2023 SC 659)***, the Apex Court observed,



-: 11 :-

“Thus there can be no doubt that the Release Deed may not by itself have the effect of a transfer of the rights of Shri. Chandran in favour of either his father or the minor son of his father from his second marriage. What however remains to be seen is whether the conduct of Sri.Chandran in executing the release deed and what is more important, receiving consideration for executing the Release Deed would result in the creation of estoppel.”

The Apex Court further observed,

“..... The real question was whether, quite apart from any transfer or contract, the declarations in the deeds of purported relinquishment and receipt of valuable consideration could not be parts of a course of conduct over a number of years which, taken as a whole, created a bar against a successful assertion of a right to property when that right actually came into being. An equitable estoppel operates, if its elements are established, as a rule of evidence preventing the assertion of rights which may otherwise exist.”

The Apex Court held that a bare renunciation of expectation to inherit cannot bind the expectant heir's conduct in future. But if the expectant heir goes further and receives consideration and so conducts to mislead an owner into not making dispositions of his



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property inter vivos, the expectant heir could be debarred from setting up his right. It was held that, by the mere execution of a Release Deed in respect of a *spes successionis*, no transfer takes place since there is no right to relinquish. The following observations of the Apex Court on the facts of the case therein are also of significance: -

“We are of the view that conjecturing that Shri Chandran has survived his father and his succession had opened intestate in regard to the estate of his father; the conduct of executing the Release Deed though by itself may not have resulted in a lawful transfer, his conduct being accompanied by the receipt of consideration would have estopped Shri Chandran. The very fact that Shri Chettiar did not execute any document by way of will only shows that he proceeded on the basis that the branch represented by Shri Chandran was being cut off from inheritance from the property in question.”.

Therefore, it is not the execution of a Release Deed that is determinative but the representation made by



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the expectant heir that he will not claim any future right, receiving consideration upon such representation, and leading the predecessor to act upon such representation which results in the application of the doctrine of estoppel.

14. Understanding the law as above, we proceed to analyse Ext.B1 document. It is a settlement deed executed by the father in favour of the children born in his first wife. Ext.B1 recites the reason for settling the properties at that point of time. It is narrated therein that, the children born in both the wedlocks are residing together in the house of the executant and causing space constraints and other inconveniences. It was necessary to arrange for the separate residence of the children born in the first marriage. It further recites that the properties dealt with under Ext.B1 are being given to the first



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plaintiff and defendants 1 and 2 having due consideration to the share to which they would be entitled to, from the father's properties. From out of the properties settled on the donees/settlees under Ext.B1, certain items are given immediate possession of whereas possession of certain items were retained with the settler during his lifetime. Ext.B1 dealt with not only the immovable properties but also movables. It was recited in the document that the movables included those which belonged to their mother. The relevant recitals in the document read thus: -

“1-ാം നമ്പരുകാരനും ഭാര്യയും 1-ാം നമ്പരുകാരന്റെ ഭാര്യമാരിൽ ഉള്ള മക്കളും കൂടി യോജിച്ചു ഇപ്പോൾ 1-ാം നമ്പരുകാരന്റെ വീട്ടിൽ താമസിച്ചുവരുന്നതും അപ്രകാരം എല്ലാവരും കൂടി യോജിച്ച് താമസിക്കുന്നതിന് സ്ഥല സൗകര്യം പോരാത്തതുകൊണ്ടും മറ്റും നമുക്ക് പലവിധമായ അസൗകര്യങ്ങളും ബുദ്ധിമുട്ടുകൾക്കും കാരണമായി തീരുന്നതുകൊണ്ടും 1-ാം നമ്പരുകാരന്റെ വക വസ്തു മുതലുകളിൽ നിന്നും 1-ാം നമ്പരുകാരന്റെ കാലശേഷം 2 മുതൽ 4 കൂടി നമ്പരുകാർക്ക് ന്യായമായി കിട്ടുവാൻ അവകാശപ്പെടുന്ന ഓഹരി വസ്തുവഹകളും ജംഗമങ്ങളും നിജപ്പെടുത്തിയും താഴെ പറയും



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ന്ന വ്യവസ്ഥകളോടുകൂടി അവകളിൽ ഏതാനും വഹകൾ 1-ാം നമ്പരുകാരന്റെ കൈവശത്തിൽ തന്നെ നിറുത്തിയും ഏതാനും വഹകൾ ഇപ്പോൾ തന്നെ 2 മുതൽ നമ്പരുകാർക്കു ആദായമെടുപ്പാനും താമസിപ്പാനും വിട്ടു കൈവശം കൊടുത്തും 1-ാം നമ്പരുകാരന്റെ വീട്ടിൽ നിന്നും 2 മുതൽ 4 കൂടി നമ്പരുകാരെ ഇപ്പോൾ തന്നെ മാറ്റി താമസിപ്പിക്കുന്നതു ആവശ്യവും സമ്മതവും മായിരിക്കുകൊണ്ട് നമ്മൾ നാലുപേരും സമ്മതിച്ചു ടി ആധാരം എഴുതി തന്നതാകുന്നു.”

“1-ാം നമ്പരുകാരൻ 2-ും 3-ും 4-ും നമ്പരുകാർക്ക് കൊടുക്കാൻ തീരുമാനിച്ചിട്ടുള്ള വീട്ടു സമ്മാനങ്ങളും അവരുടെ അമ്മയുടെ വകയായുള്ള സമ്മാനങ്ങളും എ.ബി.സി പട്ടികകളിൽ ചേർത്തിട്ടുള്ളതും വകകൾ 2-ും 3-ും 4-ും നമ്പരുകാർ എടുത്തു കൊള്ളേണ്ടതുമാകുന്നു.”

Ext.B1 specifically recites that the settlement made thereunder is in lieu of the shares of the first plaintiff, first defendant and the second defendant from the assets of the father. The recitals referred to above establish in unmistakable terms that the settlement under Ext.B1 is in lieu of their share in the father's properties over which they had only a chance of inheritance. The settlement under Ext.B1 is



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accepted by the donees/settlees. By acceptance of Ext.B1, the rights for a future share is expressly given up in consideration of the properties settled on them under Ext.B1. The right of inheritance was given up for consideration namely, the properties given under Ext.B1. The first plaintiff and defendants 1 and 2 having accepted Ext.B1, are thereafter estopped from raising any future claim for a share over the estate of the father. The mere fact that they did not execute a release deed as such in favour of the father is immaterial when, Ext.B1 was burdened with such condition and the same was accepted and acted upon by the parties. As was the case before the Apex Court in *Elumalai's case* (supra), in the light of the stipulation in Ext.B1 regarding giving up of future claims on having received consideration thereunder, Varu did not consider it necessary to execute a Will excluding the



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donees under Ext.B1. Having taken advantage under Ext.B1, the first plaintiff cannot now turn around and lay claim over the estate of the father after his death. We hold that Ext.B1 operates as an estoppel against the claim of the first plaintiff, first and second defendants for partition. We concur with the finding of the trial court in the said regard.

15. Now coming to the claim of the second plaintiff, all the children born to Varu in his second marriage, except the second plaintiff, ie. defendants 3 to 7, entered into Ext.B2 partition in the year 1981. The second plaintiff was not a party therein. Ext.B2 recited that the second plaintiff was given her share during the time of her marriage and that she does not have any manner of rights over the father's properties which are dealt with thereunder.



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16. Ext.B3 is a Sale Deed of the year 1991. It was executed by the 7th defendant in respect of the property allotted to her under Ext.B2 partition. In the said document the second plaintiff joined as executant No.2. Ext.B3 refers to Ext.B2 partition as the prior deed. It recites that the second plaintiff who is the executant No.2 therein was not a signatory to Ext.B2 partition and that it is for the said reason that she has joined in Ext.B3 as an executant. The document further recites that the sale consideration for Ext.B3 is received by the 7th defendant with the consent of the second plaintiff. The recital reads thus, “ടി ഭാഗാധാരത്തിൽ ഒന്നാം പേരുകാരിയുടെ സഹോദരി ശ്രീസാമ്മ കക്ഷിചേർന്നിരുന്നില്ല. ആകയാൽ ടിയാൻ കക്ഷി ചേർന്ന് ആധാരം എഴുതുന്നതാകുന്നു.”... ..“ടി സ്ഥലം ഉഭയസമ്മതപ്പെട്ടു 33000/- (മുപ്പത്തിമൂവായിരം രൂപ) തീരുവില നിശ്ചയിച്ച് തീർത്ഥം മുപ്പത്തിമൂവായിരം രൂപയും ഇന്നേദിവസം ഞാൻ തന്നതിനെ ടി ശ്രീസാമ്മയുടെ സമ്മതത്തോടുകൂടി അന്നമ്മ പറ്റി ബോധ്യംവന്ന് ടി വകകൾ ഇതിനാൽ....”. The learned



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counsel for the second plaintiff would contend that the above recitals in Ext.B3 would unambiguously prove that the second plaintiff was asserting her subsisting rights over the properties dealt with under Ext.B2 partition. She joined as a signatory in Ext.B3 since she was not a party to Ext.B2. It is because she has a share in the property that she joined in Ext.B3. The consideration for Ext.B3 was paid to the second defendant as consented to by the second plaintiff. These circumstances only affirm her claim over the properties covered under Ext.B2, it is argued.

17. The learned counsel for the contesting defendants would on the other hand contend that Ext.B3 acknowledges Ext.B2 partition as the basic title. In Ext.B3 the second plaintiff along with the 7th defendant affirms that the property belongs absolutely to the 7th defendant. It is recited thus:-“ടി. സ്ഥലം 1-ാം പേരുകാരി പൂർണ്ണ



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ഉടമസ്ഥതയോടെ കൈവശം വെച്ചു നികുതി മുതലായതുകൾ തീർത്ത് ക്രയവിക്രയ സ്വാതന്ത്ര്യമായി അടക്കി അനുഭവിച്ചു വരുന്നതാണ്.”. There is no affirmation by the second plaintiff of any right over the property but on the other hand, she acknowledges the absolute title with the 7th defendant which she obtained under Ext.B2 partition. Ext.B3 further recites that the 7th defendant has absolute right to convey the property by sale and to receive the sale consideration and that the second plaintiff has joined in Ext.B3 only to further secure the deal. The recital reads thus :-“ടി വഹകൾ തീർ തരുന്നതിന് തീർത്തും ഒപ്പിടുന്നതിനും 1-ാം വേരുകാരിക്ക് അവകാശം ഉണ്ടെന്നും എന്നാൽ തീർത്തത്തിന്റെ കൂടുതൽ ഉറപ്പിന് വേണ്ടി ടി ട്രീസ കക്ഷി ചേർന്നിട്ടുള്ളതുമാകുന്നു.”. Therefore, it is evident that the second plaintiff had accepted Ext.B2 Partition Deed and the allotments thereunder. Having accepted Ext.B2 partition in Ext.B3 Sale Deed, she is estopped from making any claim over the property dealt with under



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Ext.B3, is the argument.

18. We proceed to discuss on the contention regarding the acceptance of Ext.B2 partition by the second plaintiff and its legal consequence. The recitals in Ext.B3 Sale Deed to which the second plaintiff also joined as a party are being relied upon to contend that the case against the second plaintiff that she has accepted Ext.B2 partition and the recitals therein. The relevant recitals in Ext.B3 Sale Deed have already been adverted to by us in the earlier paragraphs. The said recitals are to the effect that the second plaintiff though a sharer was not a party to Ext.B2, that it is under the said circumstance that she is joining Ext.B3 Sale Deed and that the consideration for Ext.B3 Sale Deed is being paid to the 7th defendant as agreed to by the second plaintiff. This seems to suggest the assertion of rights by the second plaintiff



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in derogation of Ext.B2. However, there are further recitals in Ext.B3 which acknowledge the exclusive title of the 7th defendant based on the partition. Therefore, the said recitals by themselves are not sufficient enough to find whether Ext.B2 partition was accepted by the second plaintiff or not.

19. At any rate, under Ext.B2 the second plaintiff was not allotted any share even though under law she was a co-owner sharer. It is asserted in Ext.B2 that the second plaintiff has already been given her share at the time of her marriage and therefore, she is not being allotted to any properties. Admittedly there is no registered document evidencing the release of the rights of the second plaintiff over the properties. In terms of Section 17 of the Registration Act, relinquishment, extinguishment or assignment of rights over immovable property worth ₹ 100/- and upwards,



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could only be by a registered document. Thus, there being no registered document releasing or relinquishing her rights over the properties, her rights over the same subsist notwithstanding Ext.B2. Hence Ext.B2 is of no avail to deny the rights of the second plaintiff.

20. Now on the question as to whether being a signatory to Ext.B3 sale deed would operate as an estoppel against the second plaintiff, we have already noticed that the recitals in Ext.B3 are not sufficient enough to hold that she had accepted Ext.B2 partition. That apart, estoppel would operate only against the person to whom the representation was made. Strangers to such representation have no right to thrust such doctrine on the person who makes the representation. In *B.L.Sreedhar and others v. K.M.Munireddy(dead) and others [AIR 2003 SC 578]*, the Apex Court held,



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“... Estoppel is based on the maxim, allegans contraria non est audiendus (a party is not be heard to allege the contrary) and is that species of presumption, where the fact presumed is taken to be true, not as against all the world, but against a particular party, and that only by reason of some act done, it is in truth a kind of argumentum ad hominem.”

In *Chhanganlal Keshavlal Mehta v. Pater Narandas Haribhai* (AIR 1982 SC 121) the Apex Court held,

“To bring the case within the scope of estoppel as defined in Section 115 of the Evidence Act : (1) there must be a representation by a person or his authorised agent to another in any form – a declaration, act or omission; (2) the representation must have been of the existence of a fact and not of promises de futuro or intention which might or might not be enforceable in contract; (3) the representation must have been meant to be relied upon; (4) there must have been belief on the part of the other party. In its truth (5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment; (6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice; (7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real



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state of affairs or had means of knowledge, there can be no estoppel; (8) only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee.”

Therefore, the person who is entitled to rely upon the doctrine of estoppel is only the person against whom such representation was made. In the case at hand, the only person who could rely upon estoppel, if at all any which applies, is only the 7th defendant or the persons who claim under the 7th defendant. Thus, the plea of estoppel is of no avail to negate the rights over the second plaintiff.

21. It is next contended by the contesting defendants that without a prayer challenging Ext.B2 partition the second plaintiff is not entitled to maintain a mere suit for partition. Admittedly the second plaintiff is not a party to Ext.B2 partition.



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Partition is a recurring cause of action. [See *Kora Tomas v. Joseph (1971 KLJ 457)*, *R. Ramamurthi Iyer v. Raja V.Rajeswara Rao (AIR 1973 SC 643)*, *M.Shivananda v. M.Susheela (2021 SCC Online Ker. 3490)*, *Manakkal Nadakumar v. M.Subramanyan (ILR 2017 (1) Ker 907)*. Unless the rights over the co-owner are proved to be lost by adverse possession and limitation by establishing ouster, the right subsists. Merely because the other co-owners entered into a partition between themselves, it cannot affect the rights of the second plaintiff. Her rights remain unaffected. It is not a case where the second plaintiff is apparently, on the face of the document, a party to the same, either personally or through someone on her behalf representing her. In such an event she would have had to challenge the document. However, here she is a total stranger to the document. It being so, the second plaintiff is entitled to ignore Ext.B2 and maintain the suit for partition.



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22. Defendants 3, 4 and 7 have in their written statement raised the plea of adverse possession and ouster. The learned counsel for the second plaintiff would point out that there is no proper plea of ouster. No evidence is also adduced to establish ouster. The trial court held, *“The execution of Ext.B2 and the testimony of PW1 and DW1 would reveal that ever since Ext.B1 the defendants 3 to 7 have been in possession of plaint schedule and Ext.B2 was executed in recognition of it”*. The said finding is apparently incorrect. Ext.B1 was executed in the year 1959. Varu died only in 1972. Admittedly the marriage of the second plaintiff was after the death of Varu, that is, after the succession opened. The second plaintiff also succeeded to the property. Ext.B3 document is only in the year 1991. The suit is filed in the year 1998. Ouster could at best commence from 1991. The suit is filed within twelve years therefrom. Evidence regarding ouster is wanting.



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In the circumstances, the plea of adverse possession and ouster is to fail. Before this Court, no attempt is made by the contesting defendants to establish otherwise. The finding of the trial court on adverse possession is thus liable to be set aside and we do so.

23. The upshot of the findings above is that, while the claim for partition by the first plaintiff is bound to fail, the claim of the second plaintiff succeeds. The plaint schedule properties are the co-ownership properties of the 2nd plaintiff and defendants 3 to 7. They are entitled to 1/6 shares each.

24. Here it is to be noticed that Ext.B3 is the Sale Deed executed by the 7th defendant along with the 2nd plaintiff to the 9th defendant. Therefore, their 1/6 shares each, over the property covered under Ext.B3 remains conveyed to the 9th defendant. While allotting properties in the final decree proceedings, the



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property covered under Ext.B3 shall be included towards their shares so that the interest of the 9th defendant will not be affected.

Resultantly,

(1) R.F.A. 362 of 2003 will stand allowed. The decree and judgment of the trial court in so far as it relates to the 2nd plaintiff will stand set aside. A preliminary decree is passed on the following terms:

(i) It is declared that the 2nd plaintiff and defendants 3 to 7 are each entitled to 1/6 shares out of the plaint schedule properties.

(ii) The property covered under Ext.B3 Sale Deed shall be included in the shares of the 2nd plaintiff and the 7th defendant, to be allotted to the 9th defendant.

(iii) Equities to be worked out in the



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final decree proceedings.

(iv) The trial court to proceed with steps for final decree as directed by the Apex Court in *Kattukandi Edathil Krishnan And Anr v. Kattukandi Edathil Valsan And Ors [2022 LiveLaw(SC) 549]*

(2) R.F.A.313 of 2003 will stand dismissed affirming the dismissal of the suit as against the 1st plaintiff.

(3) Parties to bear their costs in the appeals.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
P.V. BALAKRISHNAN
JUDGE

kns/-

//True Copy//

P.S. To Judge