

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

FRIDAY, THE 25<sup>th</sup> DAY OF NOVEMBER 2022 / 4TH AGRAHAYANA, 1944

RFA NO. 626 OF 2004 (C)

AGAINST THE JUDGMENT & DECREE DATED 21.06.2004 IN OS No.306/1998

OF ADDITIONAL SUB COURT, IRINJALAKUDA

APPELLANT IN RFA/DEFENDANT No.2 IN SUIT:

JAYADEVI, D/o SUBHADRAMMA, THARAMMEL HOUSE,  
METHALA VILLAGE, KODUNGALLUR TALUK,  
NOW RESIDING AT "RAMAKRISHNA", WEST OF B.H.S.,  
KODUNGALLUR.

BY ADVS. SRI.S.V.BALAKRISHNA IYER (SR.)  
SRI.HARISH R. MENON  
SRI.K.JAYAKUMAR  
SRI.P.B.KRISHNAN  
SRI.P.M.NEELAKANDAN  
SRI.P.B.SUBRAMANYAN  
SRI.SABU GEORGE  
SRI.MANU VYASAN PETER

RESPONDENT No.1 IN RFA - PLAINTIFF IN THE SUIT /RESPONDENT No.2 IN  
RFA - DEFENDANT No.1 IN THE SUIT:

1 NARAYANA PILLA, NEPHEW OF VAKKACHIL VEETIL NARAYANAN,  
SREE SADANAM, PARAVUR MURI, PARAVUR VILLAGE AND TALUK.

2 T.VALSA PANCKER, D/o SUBHADRAMMA, (DIED)  
THARAMMEL HOUSE, THIRUVANCHIKKULAM DESOM,  
METHALA VILLAGE, KODUNGALLUR, NOW AT BADRAHARI,  
SREENAGAR, THRIKKUMARAKUDAM TEMPLE ROAD, CHUNGAM,  
AYYANTHOLE, THRISSUR.

\*(THE WORDS "D/o" AFTER THE NAME "T. VALSA PANICKER" IN  
THE NAME AND DESCRIPTION OF R2 IS DELETED AND  
SUBSTITUTED BY THE WORDS "S/o" VIDE ORDER DATED 5/3/18  
IN IA 2413/16).

ADDL.R3 K. RAJANANDINI, W/o LATE T.VALSA PANICKER,  
NOW RESIDING AT LAKSHMI MAHAL, MAITHRI BHAVAN ENGLISH  
MEDIUM SCHOOL, CHAMAKKALA, CHENTHRAPPINI,  
THRISSUR DISTRICT.

ADDL.R4 MINI RAJIV, D/o LATE T.VALSA PANICKER,  
NOW RESIDING AT FLAT No.3, SARAL APARTMENTS,  
ANNA NAGAR (W), 3<sup>rd</sup> MAIN ROAD, P-BLOCK,  
CHENNAI - 600 040.

ADDL.R5 MANOJ VALSAN, S/o LATE T. VALSA PANICKER,

NOW RESIDING AT LAKSHMI MAHAL, MAITHRI BHAVAN  
ENGLISH MEDIUM SCHOOL, CHAMAKKALA,  
CHENTHAPPINNI, THRISSUR  
DISTRICT.

R1 BY ADVS.SRI.RENJITH THAMPAN  
SMT.P.A.ANITHA  
ADDL.R5 BY ADV. SRI.K.G.BALASUBRAMANIAN

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON  
25.11.2022, ALONG WITH RFA.628/2004, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

FRIDAY, THE 25<sup>th</sup> DAY OF NOVEMBER 2022 / 4TH AGRAHAYANA, 1944

RFA NO. 628 OF 2004 (C)

AGAINST THE JUDGMENT & DECREE DATED 21.06.2004 IN OS

No.88/1997 OF ADDITIONAL SUB COURT, IRINJALAKUDA

APPELLANT IN RFA / PLAINTIFF IN SUIT:

JAYADEVI, D/o SUBHADRAMMA, NOW AT "RAMAKRISHNA",  
WEST OF B.H.S., KODUNGALLUR.

BY ADVS. SRI.S.V.BALAKRISHNA IYER (SR.)  
SRI.K.JAYAKUMAR  
SRI.P.B.KRISHNAN  
SRI.P.M.NEELAKANDAN  
SRI.P.B.SUBRAMANYAN  
SRI.SABU GEORGE  
SRI.MANU VYASAN PETER

RESPONDENTS IN RFA / DEFENDANTS 2 TO 7 & 9 TO 11 IN SUIT:

- 1 NARAYANA PILLAI, "SREE SADANAM",  
NOW AT PARK VIEW ROAD, N.PARAVUR.
- 2 MUKUNDA PANICKER [DIED]  
S/o SUBHADRAMMA, MADATHIPARAMBIL VEETIL,  
PUTHENVELIKKARA, PARAVUR TALUK.
- 3 VALSAN PANICKER [DIED]  
S/o SUBHADRAMMA, NOW AT LAKSHMI MAHAL,  
MAITHRI BHAVAN, CHAMAKKALA P.O., CHENTHRAPPINI.
- 4 VALSALA, D/o SUBADRAMMA, SIVAMANGALAM VEETIL,  
VAZHIKKULANGARA, PARAVUR TALUK.
- 5 SUSEELA, D/o SUBHADRAMMA, NOW AT SREE SADAN,  
PARK VIEW ROAD, N.PARAVUR.
- 6 RADHA, D/o SUBHADRAMMA, NOW AT SREE SADAN,  
PARK VIEW ROAD, N.PARAVUR.
- 7 SREEDEVI, D/o SUBHADRAMMA AND W/o MUKUNDA PANICKER,  
KRISHNA KRIPA, NEENDOOR, VADAKKEKARA P.O.,  
N.PARAVUR.

8 LEELA, W/o LATE VIDHYADHARAN,  
NOW AT MEERA BHAVAN, P.O.CHELOOR, IRINJALAKUDA.

9 MINOR MEERA, D/o LATE VIDHYADHARAN,  
NOW AT MEERA BHAVAN, P.O.CHELOOR, IRINJALAKUDA.  
REPRESENTED BY GUARDIAN MOTHER RESPONDENT NO. 8,  
LEELA.

ADDL.R10 K.RAJANADINI, W/o LATE VALSAN PANICKER, NOW RESIDING  
AT LAKSHI MAHAL, MAITHRI BHAVAN ENGLISH MEDIUM  
SCHOOL, CHAMAKKALA, CHENTHAPPINNI, THRISSUR  
DISTRICT.

ADDL.R11 MINI RAJIV, D/o LATE VALSAN PANICKER, NOW RESIDING  
AT FLAT NO.3, SARAL APARTMENTS, ANNA NAGAR (W), 3RD  
MAIN ROAD, P-BLOCK, CHENNAI- 600040

ADDL.R12 MANOJ VALSAN, S/o LATE VALSAN PANICKER, NOW RESIDING  
AT LAKSHMI MAHAL, MAITHRI BHAVAN ENGLISH MEDIUM  
SCHOOL, CHAMAKKALA, CHENTHAPPINNI, THRISSUR DISTRICT.

(THE LEGAL REPRESENTATIVES OF DECEASED 3RD  
RESPONDENT ARE IMPEADED AS ADDL. RESPONDENTS 10 TO  
12 VIDE ORDER DATED 7/10/16 IN IA 3304/09.)

ADDL.R13 REMA MUKUNDAN, W/o MUKUNDA PANICKER, AGED 73,  
MADATHIPARAMBIL HOUSE, OPPOSITE MINI NURSING HOME,  
P.O.PUTHENVELIKKARA, ERNAKULAM DISTRICT- 683594

ADDL.R14 M.MADHUSUDANAN, S/o MUKUNDA PANICKER, AGED 54,  
MADATHIPARAMBIL HOUSE, OPPOSITE MINI NURSING HOME,  
P.O.PUTHENVELIKKARA, ERNAKULAM DISTRICT- 683594

ADDL.R15 M.SETHUNATH, S/o MUKUNDA PANICKER, AGED 51,  
MADATHIPARAMBIL HOUSE, OPPOSITE MINI NURSING HOME,  
P.O.PUTHENVELIKKARA, ERNAKULAM DISTRICT- 683594

ADDL.R16 M.REGHUNATH, S/o MUKUNDA PANICKER, AGED 49,  
MADATHIPARAMBIL HOUSE, OPPOSITE MINI NURSING HOME,  
P.O.PUTHENVELIKKARA, ERNAKULAM DISTRICT- 683594

(THE LEGAL REPRESENTATIVES OF DECEASED 2ND  
RESPONDENT ARE IMPEADED AS ADDITIONAL RESPONDENTS  
13 TO 16 VIDE ORDER DATED 26/2/2021 IN IA 1/2019)

R1 BY ADVS. SMT.P.A.ANITHA

SRI. RENJITH THAMPAN

R3 BY ADV. SRI.K.G.BALASUBRAMANIAN

R2, R5, R6, R8 & R9 BY ADVS. SRI.JAYKAR.K.S.

SMT.M.R.MINI

SMT.MEENA.A.

SMT.PREETHY KARUNAKARAN

SRI.R.RAJESH KORMATH

SRI.RAHUL VARMA

SRI.V.S.ROBIN

SMT.SANJANA R.NAIR

R13 & R16 BY ADV. G.SREEKUMAR (CHELUR)

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON  
25.11.2022, ALONG WITH RFA.626/2004, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**CR****JUDGMENT**

Two suits were tried jointly. The leading case is O.S.No.88/1997. The connected suit is O.S.No.306/1998.

2. The leading suit is for setting aside Ext.B15 sale deed executed by the first defendant Subhadramma with respect to her properties, the plaint schedule item Nos. 1 to 3. The due execution of Ext.B15 sale deed by her is not in dispute. But the plaintiff came up with a suit for setting aside the abovesaid sale deed, Ext.B15, on the ground that it was executed against the disposition made under Ext.A4 Will in which she is one of the testators. It is the Will executed jointly by her along with her husband Ramakrishna Pillai. It was submitted that Ext.A4 Will is a reciprocal Will and as such, she would stand bound by it, wherein there is a clause that none of the testators will have the right to alter it during their life time. Hence, Ext.B15 would stand vitiated,

it was argued.

3. Admittedly, Ext.B15 deed of transfer was executed and registered by Subhadramma, the first defendant, after the death of her husband Ramakrishna Pillai. Ext.A4 (Ext.B1) by its nature is only a joint Will. The clause incorporated therein that the surviving testator will not have any right to alter any of the dispositions made under the Will should not be read in substitute of requirement of a mutual Will, unless it is supported by reciprocal demise. No such clause having the effect of reciprocal demise was included anywhere in Ext.A4 Will. Necessarily, on the death of one among the testators, the dispositions made under the Will would come into operation only with respect to the assets of the deceased testator. Even in a case of mutual Will, there is no difference in the legal position that the Will would operate only with respect to the dispositions made by the deceased and not against the other, till his/her death. In short, on the death of one among the testators, either in the case of joint Will or a mutual Will, the property left out by the

deceased testator included in the Will alone would stand bound by the disposition made therein and it would not operate as against the property of the other testator, who is alive, till his/her death. The surviving testator will have every right to deal with the property till her/his death irrespective of whether the Will and the dispositions thereunder came into effect as against the property of the deceased testator.

4. The clause incorporated in Ext.A4 Will that the surviving testator will not have any right to modify any of the dispositions under the Will after the death of one among the testators should be and must be understood pertaining to the respective property of the testators, which is further evident from the subsequent clause that if any of the testators wants to make any modification, it should be done jointly by them during their life time. These two clauses should be interpreted subject to the rule of construction embodied under Section 82 of the Indian Succession Act, for which, the entire dispositions and every part and parcel of each



clauses has to be construed conjointly and not in isolation. In fact, there is a cardinal difference in the rule of construction available to a Will or a testament apart from the normal rule of construction. The Apex Court in **Kaivelikkal Ambunhi v. H.Ganesh Bhandary [(1995) 5 SCC 444]** has even applied the maxim "*cum duo inter se pugnancia reperiuntur in testamento ultimum ratum est*", which means that in a Will, if there are two inconsistent provisions the latter shall prevail over the earlier. But it has only a limited application depending upon the context in which the clauses were incorporated and the said rule of construction can be applied to remove any repugnancy between two clauses other than dealing with an ultimate disposition repugnant to the earlier absolute one. In short, the rule of interpretation can be applied in various clauses included in a testament including clauses repugnant to each other for the purpose of determining what actually constitute the abovesaid clauses. But the 'rule of construction' though interchangeably used with 'rule of interpretation', both are different in its

application and usage. A rule of interpretation either by way of statute or otherwise stands for either to modify or limit or extend the application of a particular clause or clauses incorporated in a testament/document, hence concerned with the limitation, extension or modified application of a particular clause or clauses in relation to the statute or provision which would govern the field. When there is a subsequent clause repugnant to an earlier clause of absolute disposition, the subsequent clause would stand inoperative. But, when life interest alone was given with an ultimate disposition, what has to be applied is the rule of interpretation with respect to the wording used so as to find out any repugnancy and when it is found that the repugnancy to the extent of making the earlier clause incorporated in the subsequent clause, the rule of construction would come into play so as to determine as to which of them would operate. When there is no repugnancy either to minimize or to scale down the first disposition, there is no scope for applying the rule of construction by applying any of

the provisions of the Indian Succession Act i.e. Section 82 or 84 of the Act. A three Judge Bench of the Apex Court in **Ramachandra Shenoy and Another v. Mrs.Hilda Brite and Others (AIR 1964 SC 1323)** had the occasion to consider the wording used in a testament to the effect that "enjoyed by daughter and after her death, by her male children to as permanent and absolute hukdars" and found that it would fall under the ambit of illustration 'c' to Section 84 of the Indian Succession Act and the bequest to the first one (the daughter) found to be only a life interest and the bequest to the grand male children found to be the absolute one. In another case **Sadaram Suryanarayana and Another v. Kalla Surya Kantham and Another [(2010) 13 SCC 147]** the Apex Court has applied the rule of construction and found that if a clause is susceptible of two meanings, according to one of which it has some effect and according to the other it can have none, the former shall be preferred. It is really resting on the rule of interpretation and rule of construction as well. Paragraph 22 of the said judgment is extracted below

for reference:

"22. It is evident from a careful reading of the provisions referred to above that while interpreting a will, the courts would as far as possible place an interpretation that would avoid any part of a testament becoming redundant. So also the courts will interpret a will to give effect to the intention of the testator as far as the same is possible. Having said so, we must hasten to add that the decisions rendered by the courts touching upon interpretation of the wills are seldom helpful except to the extent the same recognise or lay down a proposition of law of general application. That is so because each document has to be interpreted in the peculiar circumstances in which the same has been executed and keeping in view the language employed by the testator. That indeed is the requirement of Section 82 of the Succession Act also inasmuch as it provides that meaning of any clause in a will must be collected from the entire instrument and all parts shall be construed with reference to each other."

5. But, when there are clauses in which the second clause/subsequent clause found to be repugnant to the earlier absolute disposition, what has to be applied is the rule of construction available to a testament by virtue of the provisions contained in the Indian Succession Act. It is yet another special rule of construction of Will, as discussed earlier,

that a subsequent repugnant clause with an ultimate disposition so as to scale down the earlier absolute disposition would stand inoperative and invalid. The law on the point was laid down by this Court in **Kannoth Kottaran Omana Amma v. Chathoth Balachandran and Others (2020 (3) KHC 69)** that:

“when rule of construction and principle governing interpretation applied, it should be understood in the context of factual issues involved in the case and it cannot be taken as a legal proposition laid down on any relevant provision of law. It is neither permissible nor advisable to mix up or inter-change a legal proposition or a provision of law with rule of construction of a document. It is always permissible when there are two repugnant provisions to proceed to the furthest extent to avoid repugnancy. But that does not mean that when an absolute interest created to a legatee with ultimate disposition on the death of the devisee, the absolute interest created would stand scaled down to a life interest invariably in all cases.”

6. There may be cases in which the court can apply both the rule of interpretation and construction simultaneously. Sometimes it may be overlapping and interchangeably used.

7. The doctrine of mutual Wills or secret trusts and its legal impact was also laid down by the Apex Court in **Shiva Nath Prasad v. State of W.B. and Others (2006 KHC 145)**, wherein the question of revocation of Will by the surviving testator after the death of the other was answered positively, but subject to the constructive trust and the conditions imposed.

8. From the discussion above made, it is clear that the sale deed executed by the mother Subhadramma, the first defendant, with respect to her property during her life time under Ext.B15 is valid and legally sustainable. In so far as the counter claim raised is concerned, the property comes to 1 acre 56 cents. Admittedly, it is the property left out by the father Ramakrishna Pillai. Ext.A4 would come into force as against the property left out by him. As discussed earlier, Ext.A4 is not a mutual Will. Hence, the disposition made under the Will as against the property left out by the deceased testator would operate and the legatees alone will get the property. The legatees are admittedly

plaintiff and defendant No.9. Hence, the counter claim granted is unsustainable and liable to be set aside. I do so. The decree granted in the connected suit in O.S.No.306/1998 deserves no interference.

RFA No.628/2004 will stand allowed by setting aside the decree and judgment and the counter claim decree in O.S.No.88/1997 and the suit and the counter claim will stand dismissed. RFA No.626/2004 will stand dismissed confirming the decree and judgment of trial court in the connected suit - O.S.No.306/1998. No costs.

sd/-

**P. SOMARAJAN**  
**JUDGE**

sv