



2023/ER/37102

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

MONDAY, THE 26TH DAY OF JUNE 2023 / 5TH ASHADHA, 1945

RFA NO. 323 OF 2006

AGAINST THE JUDGMENT AND DECREE DATED 09.12.2005 IN OS
242/2000 OF ADDITIONAL SUB COURT, PALAKKAD

APPELLANTS/DEFENDANTS 3 & 4:

- 1 USHA KUMARI,
W/O MURALEEDHARAN, RESIDING AT VALLUVAKUNDU
KALAM, ELAVANCHERRY AMSOM, CHITTUR TALUK,
PALAKKAD DISTRICT.
- 2 AMRITHAVALLY, W/O. SADANANDAN,
RESIDING AT NOMBIKOTTIL, ELAVANCHERRY AMSOM,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADVS.
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.T.KRISHNANUNNI SR.
SRI.SREEKANTH.K.R
SRI.SUNIL J.CHAKKALACKAL

RESPONDENTS/PLAINTIFFS/DEFENDANTS 1,2 AND 5 TO 10:

- 1 SANTHA KUMARI, W/O R.P.HARIDAS,
RESIDING AT 4/142, VENOLI ROAD, KALLEPPULLI
AMSOM, PALAKKAD TALUK.
- 2 VASANTHAKUMARI, W/O. SREENIVASAN,
RESIDING AT PANNIPERUMTHALAYIL, THEKKEDESOM,
NALLEPILLI, CHITTUR TALUK, PALAKKAD DISTRICT.



- 3 USHA, W/O. LATE SUKUMARAN,
RESIDING AT VALLUVAKUNDUKALAM, ELAVANCHERRY
AMSOM, CHITTUR TALUK, PALAKKAD DISTRICT.
- 4 PEEYUSH (MINOR), SO. LATE SUKUMARAN,
RESIDING AT VALLUVAKUNDUKALAM, ELAVANCHERRY
AMSOM, CHITTUR TALUK, PALAKKAD DISTRICT.
- 5 RAJESH (MINOR), SO. LATE SUKUMARAN,
RESIDING AT VALLUVAKUNDUKALAM, ELAVANCHERRY
AMSOM, CHITTUR TALUK, PALAKKAD DISTRICT.
- 6 MADHURAKUTTY, W/O. RAJAN,
RESIDING AT KADUVETTY HOUSE, KUNISSERI AMSOM,
ALATHUR TALUK, PALAKKAD.
- 7 BABY GIRIJA, W/O. SUNDARAN,
RESIDING AT VALARAYIL, NALLEPILLI VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.
- *8 VISWANATHAN, **[DIED; LRs IMPLEADED]**
W/O. NANUR,
RESIDING AT HILTON, P.B.NO.1090, MANAMA, BAHRAIN.
- 9 VEERASWAMY, S/O. ANKAMUTHU
RESIDING AT VALLUVAKUNDIL, ELAVANCHERRY AMSOM,
CHITTUR TALUK, PALAKKAD DISTRICT.
- 10 KRISHNAN, S/O. ANKAMUTHU,
RESIDING AT VALLUVAKUNDIL, ELAVANCHERRY AMSOM,
CHITTUR TALUK, PALAKKAD DISTRICT.
- 11 A.PRADEEP, S/O. ARUMUGHAN
RESIDING AT VALLUVAKUNDUKALAM, KIZHAKKUMURI,
ELAVANCHERRY AMSOM, CHITTUR TALUK,, PALAKKAD
DISTRICT.
- 12 SAHADEVAN, S/O. MADHAVAN RESIDING AT
VALLUVAKUNDUKALAM, KIZHAKKUMURI, ELAVANCHERRY
AMSOM, CHITTUR TALUK, PALAKKAD DISTRICT.



13 MANOJ KUMAR, S/O. SUNDARAN, RESIDING AT
VALLUVANKUNDUKALAM, KIZHAKKUMURI, ELAVANCHERRY
AMSOM, CHITTUR TALUK, PALAKKAD DISTRICT.

*** ADDL. RESPONDENTS 14 TO 16**

14 ANITHA,
WIDOW OF VISWANATHAN, VALLUVARKUNDU KALAM,
KIZHAKKEMURI P.O., PALAKKAD-678508.

15 ASWIN (MINOR),
REPRESENTED BY HIS GUARDIAN MOTHER 14TH
RESPONDENT
S/O LATE VISWANATHAN, VALLUVARKUNDU KALAM,
KIZHAKKEMURI P.O., PALAKKAD-678508.

16 AVINASH (MINOR),
REPRESENTED BY HIS GUARDIAN MOTHER 14TH
RESPONDENT,
S/O LATE VISWANATHAN, VALLUVARKUNDU KALAM,
KIZHAKKEMURI P.O., PALAKKAD-678508.

*** [THE LEGAL HEIRS OF DECEASED 8TH RESPONDENT ARE IMPEADED AS
ADDITIONAL RESPONDENTS 14 TO 16 VIDE ORDER DATED 1.11.16 IN IA
2408/16]**

BY ADVS.
SRI.K.JAYESH MOHANKUMAR
SRI.JACOB SEBASTIAN
SRI.JACOB SEBASTIAN
SRI.P.R.VENKETESH
SRI.RAJESH SIVARAMANKUTTY
SRI.RENJITH THAMPAN
SRI.P.R.VENKATESH
SRI.T.SETHUMADHAVAN
SRI.V.M.KRISHNAKUMAR - R12

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING
ON 26.06.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



SATHISH NINAN, J.

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R.F.A. No.323 of 2006

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Dated this the 26th day of June, 2023

J U D G M E N T

The preliminary decree in a suit for partition is under challenge by defendant Nos.3 and 4.

2. The plaint schedule consists of 20 items of properties. The properties originally belonged to one Nanu under Ext.A1 Partition Deed dated 02.01.1976. Nanu, in his first wife Lakshmi, had five children. One among them viz. Sukumaran is no more. Plaintiffs 1 and 2, and defendants 1 and 5 are the other children. Plaintiffs 3 to 5 are the wife and children of Sukumaran. The second wife of Nanu is one Chella. Defendants 2, 3 and 4 were born to Nanu in Chella. The plaintiffs claim partition.

3. The suit was contested by defendants 3 and 4. According to them, Nanu had executed three Gift Deeds; Ext.B1 Gift Deed in favour of the third defendant, Ext.B2 Gift Deed in favour of the 4th defendant, and Ext.B3 Gift Deed in favour of his wife Chella. Exts. B1



to B3 Gift Deeds were executed on 22.02.1990, gifting thereunder various items of properties from out of those scheduled in the plaint. It is only the remaining properties that are liable to be partitioned, is the contention.

4. The plaintiffs filed a rejoinder disputing the genuineness of the Gift Deeds.

5. The trial court held against the Gift Deeds and accordingly passed a preliminary decree for partition. The claim for equitable allotment by defendants 6 to 10, who are assignees from the donees under the Gift Deeds, was reserved to be considered in the final decree proceedings.

6. Heard Sri.T.Krishnanunni, learned Senior Counsel for the appellants and learned Senior Counsel Sri.T.Sethumadhavan on behalf of the respondents.

7. On the rival contentions of the parties and having heard the learned senior counsel on either side, the following points arise for determination :-



“(i) Is the written statement in a suit, a public document falling under Section 74 of the Indian Evidence Act ?

(ii) Have defendants 3 and 4 proved the due execution of Exts.B1 to B3 Gift Deeds ?”

8. Before I proceed to discuss on the proof of Exts.B1 to B3 Gift Deeds, it would be appropriate to refer to a litigation that had occurred in the family of Nanu even during his lifetime. It is of significance that the lis was later in point of time to the execution of the Gift Deeds.

9. The present first plaintiff had filed a suit as O.S. 151/90 against Nanu and the other members in the family viz. the parties to the present suit. Nanu was the first defendant therein. That suit was one for partition. Therein the plaintiff claimed that the properties are family properties. Ext.B5 is the plaint and Ext.B6 is the decree therein. Sukumaran, the predecessor of plaintiffs 3 to 5 herein, had filed Ext.B8 written statement in that suit denying the claim



of the plaintiff that it is family property. What is relevant and of significance is Ext.B11, which is the written statement filed by Nanu along with the present defendants 3 and 4. In Ext.B11 written statement, the Gift Deeds which are in issue in the present suit (Exts. B1 to B3) were specifically adverted to. The properties covered under the three Gift Deeds were scheduled to the written statement and it was stated that the properties were conveyed under Exts.B1 to B3 Gift Deeds to defendants 3 and 4, and their mother Chella. The suit was ultimately dismissed for non-prosecution. The categorical admission of Nanu regarding the execution of the Gift Deeds, is of much significance and is to be borne in mind while evaluating the evidence regarding proof of Exts.B1 to B3 gifts.

10. Admission in the written statement is substantive evidence. The admission made by Nanu in Ext.B11 written statement filed in the suit in which all the present parties were parties, cannot be brushed



aside. While the first plaintiff was examined as PW1, Ext.B11 written statement and the content was specifically put to her. However, she just feigned ignorance. Pertinently, Ext.B11 was not denied. So also, while DW1 was cross-examined, not even a question or a suggestion was put to the witness challenging Ext.B11 written statement.

11. The trial court held that, Ext.B11 is only the certified copy of the written statement, that it is only a secondary evidence and is inadmissible. Section 74 of the Indian Evidence Act reads thus :-

“74. Public documents.-The following documents are public documents:-

(1) documents forming the acts or records of the acts-

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) public records kept in any State of private documents.”



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On the question as to whether the pleadings in a suit are public documents, there have been divergent opinions. The Calcutta, Bombay and Orissa High Court have taken the view that pleadings are not public documents [See, *Shazada v. Wedgeberry (1873) 10 Bengal Law Reports, App. 31 Akshoy Kumar v. Sukumar, AIR 1951 Cal 320 (321), Smt. Shamlata wd/o Manohar Raut v. Vishweshara Jukarami Giripunje & Others, AIR 2008 Bom. 155, Bijayanti Nanda v Jagannath Mahaprabhu Marfat Adhikari Mahanta Bansidhar Das Goswami, AIR 2014 Ori. 128*). In *Saritha S. Nair v. Union of India and Anr. 2022 (5) KHC 527*, this Court referring to Section 74(1)(iii) of the Act held that pleadings, affidavits and petitions filed in Court are not acts of the Court or record of such acts. However, a Full Bench of the Madras High Court expressed a contrary view in *Katikineni Venkata Gopala Narasimha Rama Rao vs. Chitluri Venkataramayya, AIR 1940 Mad 768*. The full bench observed, “As the learned Judges who have made the reference have pointed out, a plaint or a written statement has always been regarded by this Court as forming part of the record of a case and a public document of



which an interested party may obtain a certified copy". In ***Chandulal and Anr. v. Bhagwan Dass and Ors. (2010) 49 RCR(Civil) 136***, the Punjab and Haryana High Court held certified copy of written statement to be proceedings of judicial record and per se admissible under Section 74 of the Evidence Act. In ***Jagdishchandra Chandulal Shah v. State of Gujarat 1988 Supreme (Guj) 139***, the Gujarat High Court held that certified copy of a plaint is a public document.

12. It is relevant to note that, the divergent views expressed by various Courts as above, have been made with reference to Section 74(1)(iii) of the Evidence Act. While some High Courts took the view that pleadings will fall within the scope of "acts and record of acts" of the Court, a contrary view was taken by other Courts.

13. According to me, what Section 74(1)(iii) refers to are, acts of the Court which are documents by themselves viz. orders, judgments and the like, and



records of the acts of the Courts are, the documents wherein the acts of the Court have been recorded viz. deposition of the witnesses. Incidentally it is to be noticed that, Section 3 of the Evidence Act defines “Document” as, *“any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter”*. Section 74(1)(iii) will not take within its sweep the pleadings of the parties they being neither an act of the Court nor a document recording an act of the Court.

14. However, Section 74(2) of the Act is of significance. The applicability of the same in respect of pleadings, have not gone into the zone of consideration in the cases referred to supra. It reads, *“Public records kept in any State of private documents”*. Clause (2) of Section 74 refers to private documents kept as public records. The term “kept” can only be understood to mean, “maintained”. The Apex Court in



Gurudial Singh & Ors. v. Raj Kumar Aneja and Ors., AIR 2002 SC 1003

held that, “a pleading once filed is part of the record of the Court and cannot be touched, modified, substituted, amended or withdrawn except by the leave of the Court”.

Though pleadings of a party are private in character, once filed in Court, the Court is to retain custody of the same. Therefore, it becomes a record maintained by the Court which is a public office.

Records held by a public office partake the character of public records. Therefore pleadings, which are private documents, once filed in Court, form part of public records kept in the Court, thus attracting clause 2 of Section 74 of the Act. The Apex Court in ***Anitha Malhotra v.***

Apparel Export Promotion Council and Ors., AIR 2012 SC 31,

referring to Section 74(2) of the Act held that, the annual returns filed under the Companies Act, 1956

though a private document, it forms part of the public records in terms of Section 74(2) of the Act. In

Narendra Prasad & Others v. Indian Express Newspapers (Bombay)

Private Limited & Others 2015-5-L.W.221, the High Court of



Madras held that, once a plaint is registered and taken on file by the Court it partakes the character of a public document.

15. Rules 113 and 240 of the Civil Rules of Practice, Kerala, Rule 226 of the Criminal Rules of Practice, Kerala, and Rule 129 of the Rules of the High Court of Kerala, 1971, enable even strangers to the proceedings to search for and obtain certified copy of the records and documents filed in Court, of course, subject to orders of the Court. This is in tune with Section 76 of the Evidence Act which provides that certified copies of public documents are liable to be issued to any person who has a “right” to inspect such documents. As held in *Rasipuram Union Motor Service Ltd. vs. Commr. of Income Tax, Madras, AIR 1957 Mad. 151*, it is the person who has a right to inspect, that is given the right to obtain copy.

16. Thus, it could be concluded that, pleadings of parties once filed in Court becomes part of the public



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records maintained by the Court and thus, is a public document within the purview of Section 74(2) of the Evidence Act. A similar view was also taken by the Gauhati High Court in *Shri. Narattam Das and Others v. Md Masaddar Ali Barbhuiya and Others, (1991) 1 Gau LR 197(DB)*. Though the Patna High Court in *Gulab Chand v. Shree Karam Lal, AIR 1964 Pat 45 (DB)* has taken the view that plaint is not a public document within 74(2) of the Act, for the reasons stated supra, I am unable to concur with the same.

17. Section 77 of the Evidence Act enables production of certified copies of public documents in proof of the contents of such public document. At any rate, Ext.B11 was admitted in evidence without objection. It is not an inherently inadmissible document. The objection could only be on the mode of proof namely, with regard to satisfaction of the procedure regarding admissibility of secondary evidence. Objection as to mode of proof falls within procedural



law and could be waived. [*Dayamathi Bai vs. K.M. Shaffi, 2004(7) SCC 107, R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and Ors., 2003(8) SCC 752*]. Objection to the admissibility of Ext.B11 having not been raised at the time of admitting, it could not be urged subsequently. Therefore, at any rate, the finding entered into by the trial court on the admissibility of Ext.B11 is only to be set aside and I do so.

18. As noticed earlier, except for feigning ignorance of Ext.B11 written statement, there is no challenge that it is not one filed by Nanu. Admission in pleadings is a substantive evidence. (*Bishwanath Prasad and Ors. v. Dwarka Prasad & Ors. AIR 1974 SC 117*). The entire evidence with regard to the execution of Exts.B1 to B3 Gift Deeds are to be appreciated bearing in mind the specific admission of Nanu regarding its execution. So also, it is also to be noticed that, pursuant to Ext.B1 to B3 Gift Deeds the properties were mutated and various assignments were effected. Exts.B1 to B3 are in the year



1990 and the suit is filed in year 2000.

19. Now coming to the proof of the Gift Deeds, in terms of Section 68 of the Indian Evidence Act, since the execution of the Gift Deeds are denied, defendants 3 and 4 are bound to prove due execution in the manner as provided under the section. The section requires the execution to be proved by examining at least one attesting witness. In compliance with the same, the second attester to the Gift Deeds was examined as DW3. In his chief examination, he has spoken about the due execution and attestation of the Gift Deeds. Though the learned Senior Counsel for the respondent would contend that, in the cross-examination of DW1 he has not spoken about his affixing of signature in the Gift Deeds, it is pertinent to note that in the cross-examination no questions in the said regard was put to him. In the chief examination he has categorically stated about the executant having signed the Gift Deeds in the presence of both the witnesses and also that they affixed



signatures in the presence of the executant. While appreciating the evidence of the witnesses regarding execution of the Gift Deeds it is to be borne in mind that, the Gift Deeds were executed in the year 1990 and the examination is in the year 2005 i.e., 15 years after the execution. Therefore, the witnesses cannot be expected to depose with precision regarding the sequence of events etc. DW3 has spoken that he knows Nanu since the year 1978 and that he frequently used to visit the document writer's office. According to him, the reason for execution of the Gift Deeds was that, at that time, defendants 3 and 4 were the only unmarried daughters. The other Gift Deed was in favour of his surviving wife.

20. Relying on the deposition of DW1 that Nanu used to write his name in English and then affix his signature, it was argued that, Exts.B1 to B3 Gift Deeds contain only a mark, which is suspicious. DW3 has deposed that Nanu expressed that he is unable to write due to his old age. There is no allegation of



impersonation. The executant was identified by DW2. He is Nanu's brother's son. There is no challenge that the signature seen in the Gift Deeds is not of Nanu. On the other hand, the signature of Nanu as seen in Ext.B1 Gift Deed when specifically put to PW1 in cross examination and an evasive reply was given that, she cannot say. The signature was not denied.

21. Though the trial court observed that the witnesses to the Gift Deeds are the document writers and that there are no other independent witnesses, as noticed above, DW2 the identifying witness is Nanu's brother's son. DW3 has explained that he and his senior signed as attestors since the persons who had agreed to be witnesses had not reached by the time the documents were ready.

22. Though the trial court has observed that defendants 3 and 4 supports only Exts.B1 and B2 Gift Deeds and claimed that the properties conveyed under Ext.B3 Gift Deed is available for partition, such a



statement does not seem to be correct. Exts.B1 to B3 Gift Deeds were executed and registered together on the same date. All the three are attested by the very same witnesses and identifying witness. The properties gifted to Chella under Ext.B3 gift were alienated by her. Chella was no more even much prior to the date of the suit. Therefore, defendants 3 and 4 were practically interested only in Exts.B1 and B2 Gift Deeds. The said background was omitted to be considered by the trial court.

23. Though PW2 viz. Nanu's brother's son was an identifying witness, he is not an attestor to the Gift Deeds. The trial court has taken exception on it and stated that it creates shadow of doubt on the documents. Such suspicion is baseless for the simple reason that DW2 has vouched the execution of the documents by Nanu and stood as an identifying witness for registration of the document. He supports the documents.



24. The trial court has also viewed Exts.B1 to B3 in suspicion for the reason that, the reason for execution of Gift Deeds to defendants 3 and 4, and for selling the properties of Chella is claimed to be, to meet the marriage expenses. I do not find any reason as to why it should militate against the execution of the Gift Deeds.

25. The trial court has observed that the execution of the three Gift Deeds were done in a clandestine manner and the execution of the documents were attempted to be kept as secret, the same is evidently incorrect. Immediately after execution, the properties were mutated and even certain properties were alienated. Though it is stated by the lower court that it was very unlikely for Nanu to have excluded the plaintiffs by executing the Gift Deeds, it is to be noticed that the entire properties of Nanu were not gifted under Exts.B1 to B3. It is to be borne in mind that, at that time, defendants 3 and 4 were the only unmarried daughters of Nanu which



justified the Gift Deeds.

26. It is to be borne in mind that the documents under consideration are not Will Deeds where any and all suspicious circumstances are required to be dispelled by the propounder. The documents in question are Gift Deeds. All that law requires is proof of the same in terms of Section 68 of the Evidence Act. Its due execution and attestation have been proved by the evidence of PW3. There has been misreading of the evidence by the trial court. On a totality of the materials, there is no reason to hold against Exts.B1 to B3 Gift Deeds. The finding against the said documents, entered into by the trial court is liable to be set aside and I do so. Exts.B1 to B3 Gift Deeds are upheld.

27. Once Exts.B1 to B3 Gift Deeds are upheld, the properties covered thereunder are liable to be excluded from partition. The properties covered under the Gift Deeds are plaint schedule item numbers 2,3,4,5,6,7,9, 12,13, portion of item 10 included in Ext.B3 and shares



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of item 15 included in Exts.B1 to B3. Only the remaining items are available for partition. The shares allotted to the parties are correct and needs no modification.

In the result, this appeal is allowed. The decree and judgment of the trial court will stand modified excluding the properties included in Exts.B1 to B3 Gift Deeds as stated in paragraph 27 from partition. The preliminary decree for partition passed by the trial court in respect of the remaining properties shall remain intact. No costs.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge