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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Certified to be true Copy
Assistant Registrar (Judl)
Civil S.B. 6/7/22
Supreme Court of India

CIVIL APPEAL NO(S). 6406-6407 OF 2010

KATTUKANDI EDATHIL KRISHNAN & ANR. ...APPELLANT(S)

VERSUS

KATTUKANDI EDATHIL VALSAN & ORS. ...RESPONDENT(S)

(IA No. 8135/2020 - APPLICATION FOR SUBSTITUTION
IA No. 29160/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

058104

(For full cause title and details of the Court appealed from
please see Schedule 'A' attached herewith)

Dated : 13-06-2022 This matter was called on for pronouncement of
judgment today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. V. Chitambaresh, Adv.
Mr. K. Rajeev, AOR

For Respondent(s) Mr. R. Basant, Sr. Adv.
Mr. V. Giri, Sr. Adv.
Mr. Raghenth Basant, Adv.
Mr. K.B. Shivarama Krishnan, Adv.
Ms. Liz Mathew, AOR
Mr. Amith Krishnan, Adv.
Mr. Akshay Sahay, Adv.
Ms. Roopali Lakhotia, Adv.

The Appeals alongwith Interlocutory Applications above-
mentioned being called on for hearing before this Court on the 27th
and 28th day of April, 2022, UPON perusing the record and hearing
counsel for the appearing parties above-mentioned, the Court took
time to consider its Judgment and the appeal being called on for
Judgment on the 13th day of June, 2022, THIS COURT for the

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reasons and observations recorded in its Judgment DOTH inter-alia PASS the following ORDER :

“27. We have also perused the evidence of the defendants. We are of the view that the defendants have failed to rebut the presumption in favour of a marriage between Damodaran and Chiruthakutty on account of their long co-habitation. In the circumstances, the High Court was not justified in setting aside the said judgment of the Trial Court.

28. Resultantly, the appeals succeed and are accordingly allowed. The judgment of the High Court impugned herein is set aside and the judgment and decree passed by the Trial Court is restored. Parties are directed to bear their respective costs.

Re.: Delay in initiating final decree proceedings under Order XX Rule 18 of the Code of Civil Procedure, 1908

29. Before parting, we deem it necessary to address a concerning trend of delay in drawing up the final decrees under Rule 18 of Order XX of the Code of Civil Procedure, 1908 (for short, ‘CPC’). This provision deals with decrees in suits for partition or separate possession of share therein. It provides as under:

X X X

33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree *suo motu*. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, *suo motu* and without requiring initiation of any separate proceedings.

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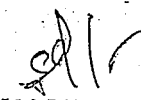
WITN

Chief Justice
the 13th day

34. We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in paragraph '33' of this judgment to the concerned Trial Courts in their respective States."

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Nuthalapati Venkata Ramana, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 13th day of June, 2022.


(PAWAN KUMAR)
ADDITIONAL REGISTRAR





Schedule A

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Amended Cause Title

2/12/09

IN THE SUPREME COURT OF INDIA
C.A Nos. 6405-6407/2010
(Order XVI Rule 4(1)(a))

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CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) No. OF 2009

(Against the final order/judgment dated 05.02.2009 passed by the Hon'ble High Court of Kerala at Ernakulam in AS. No. 102 of 1996 and AS. No. 107 of 1996.)

WITH PRAYER FOR INTERIM RELIEF

BETWEEN

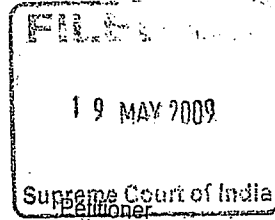
POSITION OF THE PARTIES

SLP arising out of
AS. No. 102 of 1996.

In the High Court In this Hon'ble Court

1. Kattukandi Edathil Krishnan,
S/o. Kattukandi Edathil Damodaran,
"Sukrishna", Puthiya Veedu Paramba,
Valayanad Amsom desom,
Kozhikode Dt. Kerala.

Respondent
NO: 1



2. Kattukandi Edathil Gilson,
S/o. Krishnan,
"Sukrishna", Puthiya Veedu Paramba,
Valayanad Amsom desom,
Kozhikode Dt. Kerala.

Respondent
NO: 2

Petitioner

AND

*1. Kattukandi Edathil Valsan,
S/o. Karunakaran,
Cheriyattidam Paramba,
Kasaba Village,
Kozhikode Dt. Kerala.

Appellant
NO: 1

Contesting Respondent

2. Kattukandi Edathil Umadevi, (Deal) Chr Lrs.
W/o. Karunakaran,
Kattukandi Edathil House,
Chalappuram,
Kozhikode Dt. Kerala.

Respondent
NO: 3

Contesting Respondent

*3. Kattukandi Edathil Kasthuri,
D/o. Karunakaran,
Kattukandi Edathil House,
Chalappuram,
Kozhikode Dt. Kerala.

Respondent
NO: 4

Contesting Respondent

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4. Kattukandi Edathil Saraswathi Bai,
D/o. Karunakaran,
Kattukandi Edathil House,
Chalappuram,
Kozhikode Dt. Kerala

Respondent
NO: 5

Contesting Respondent

SLP arising out of
AS. No. 107 of 1996.

1. Kattukandi Edathil Krishnan,
S/o. Kattukandi Edathil Damodaran,
"Sukrishna", Puthiya Veedu Paramba,
Valayanadi Amsom desom,
Kozhikode Dt. Kerala.

Respondent
NO: 1

Petitioner

2. Kattukandi Edathil Gilson,
S/o. Krishnan,
"Sukrishna", Puthiya Veedu Paramba,
Valayanadi Amsom desom,
Kozhikode Dt. Kerala.

Respondent
NO: 2

Petitioner

AND

1. Kattukandi Edathil Valsan,
S/o. Karunakaran,
Cheriyattidam Paramba,
Kasaba Village,
Kozhikode Dt. Kerala.

Respondent

Contesting Respondent

2. Umadevi, (Deed) the Ltr.
W/o. Karunakaran,
Kattukandi Edathil House,
Chalappuram,
Kozhikode Dt. Kerala.

NO: 3

Appellant
NO: 1

Contesting Respondent

3. Kasthuri,
D/o. Karunakaran,
Kattukandi Edathil House,
Chalappuram,
Kozhikode Dt. Kerala.

Appellant
NO: 2

Contesting Respondent

4. Saraswathi Bai,
D/o. Karunakara.,
Kattukandi Edathil House,
Chalappuram,
Kozhikode Dt. Kerala.

Appellant

Contesting Respondent

SHEWETH:-

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2. QUESTIONS

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R. Nos. 1, 3 & 4 are brought on record as Ltr. of Deceased
TO R No. 2 vide Hon'ble Court's order dt 13-6-2022 para 14
IA No. 6135 of 2020
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA
Completed 14/6/22
ASSISTANT REGISTRAR

THE SPECIAL LEAVE PETITION OF THE
PETITIONER MOST RESPECTFULLY

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SHEWETH:-

1. The petitioners prefer the above Special Leave Petition under Article 136 of the Constitution of India against the final order/judgment dated 05.02.2009 passed by the High Court of Kerala at Ernakulam in AS. No. 102 of 1996 and AS. No. 107 of 1996, whereby the High Court allowed the appeals and set aside the decree for partition passed by the Trial Court.

2. QUESTIONS OF LAW:

The following questions of law arise for consideration by this Hon'ble Court:

I. WHEN law presumes in favour of marriage and against concubinage when a man and woman cohabited continuously for a number of years, whether High Court was justified in holding otherwise despite non-rebuttal of presumption?

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II. WHETHER the High Court was justified in not giving due weightage to the birth certificate, the contents of which is a relevant fact under Section 35 of the Evidence Act, and held that the marriage is not proved, thereby deviated from the established principle that an attempt should be made to lean towards legitimacy and frowns upon bastardity?

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III. WHEN the petitioners/plaintiff proved the factum of cohabitation by adducing oral and documentary evidence and when there is no evidence adduced to rebut the same, whether the High Court was justified in holding that cohabitation is not proved?

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IV. WHETHER the High Court was justified in reversing the finding of the Trial Court without adverting to any of the documentary evidence produced by the petitioner to prove the cohabitation between his mother and father?

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V. WHEN the defendants in their oral testimony did not deny the factum of marriage and oral testimony on the side of the petitioners positively proved the marriage and

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6406-6407 OF 2010

KATTUKANDI EDATHIL KRISHNAN & ANR. ...APPELLANT(S)

VERSUS

KATTUKANDI EDATHIL VALSAN & ORS. ...RESPONDENT(S)

DECREE ALLOWING THE APPEAL
WITH DIRECTIONS. PARTIES ARE
DIRECTED TO BEAR THEIR
RESPECTIVE COSTS.

Dated this the 13th day of June, 2022.



[Handwritten signature]

Mr. K. Rajeev,
Advocate on Record for the
Appellants.

Ms. Liz Mathew,
Advocate on Record for the
Respondent Nos. 1 to 4.