2025:KER:97956

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 19TH DAY OF DECEMBER 2025 / 28TH AGRAHAYANA, 1947

RFA NO. 290 OF 2019

AGAINST THE JUDGMENT AND DECREE DATED 07.12.2018 IN O.S NO.127 OF 2014 OF SUB COURT, CHAVAKKAD

APPELLANTS/PLAINTIFFS:

1 SUJATHA KRISHNAN
AGED 42 YEARS
W/O. LATE KRISHNAN, SREEKOVIL, LAKKADI POST,
OTTAPPALAM TALUK, PALAKKAD DISTRICT.

2 K.BHAVANI @ BHAVANI
AGED 17 YEARS
(MINOR), D/O. LATE KRISHNAN.

3 K.ADWAITH
AGED 10 YEARS
(MINOR), S/O. LATE KRISHNAN.

4 K.ANIRUDH
AGED 10 YEARS
(MINOR), S/O. LATE KRISHNAN,
2 TO 4 MINORS ARE REPRESENTED THEIR GUARDIAN AND MOTHER SUJATHA KRISHNAN, SREEKOVIL, LAKKADI POST,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADVS.
SRI.R.SREEHARI
SRI.SACHIN VYAS
SHRI.P.B.KRISHNAN (SR.)

RESPONDENTS/DEFENDANTS:

1 **RADHA MOHANDAS**
AGED 68 YEARS
W/O. MOHANDAS, 8/14, AYYAPPA NAGAR, CHINMAYA NAGAR, CHENNAI TAMIL NADU-600094.

2 **MOHANDAS**
AGED 76 YEARS
8/14 AYYAPPA NAGAR, CHINMAYA NAGAR, CHENNAI, TAMIL NADU-600094.(DIED)

3 **KISHORE**
AGED 43 YEARS
S/O. MOHANDAS, 8/14, AYYAPPA NAGAR, CHINMAYA NAGAR, CHENNAI, TAMIL NADU 600094.

*** IT IS RECORDED THAT RESPONDENT NO.2 IS NO MORE. RESPONDENTS 1 AND 3 AND THE APPELLANTS ARE THE LEGAL HEIRS VIDE ORDER DATED 19.9.2025 IN MEMO DATED 21.12.2020**

BY ADVS.
SRI.M.P.ASHOK KUMAR FOR R1 TO R3
SMT.BINDU SREEDHAR FOR R1 TO R3
SHRI.ASIF N FOR R1 TO R3

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON 12.12.2025, THE COURT ON 19.12.2025 DELIVERED THE FOLLOWING:

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SATHISH NINAN & P. KRISHNA KUMAR, JJ.

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R.F.A.No.290 OF 2019

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Dated this the 19th day of December, 2025

JUDGMENT

P.Krishna Kumar, J.

The plaintiffs in a suit for partition are the appellants herein. By the impugned preliminary decree, the trial court directed partition of the plaint schedule properties by metes and bounds into four equal shares among plaintiff Nos. 1, 3, and 4, and the first defendant, thereby excluding plaintiff No. 2.

2. The parties shall hereinafter be referred to in accordance with their respective status in the suit. The plaint schedule properties originally belonged to one Krishnan, who died intestate on 10.12.2012. The first plaintiff is his widow, and the first defendant is his mother. Plaintiff Nos. 3 and 4 are the children born to Krishnan through the first plaintiff. The sole issue in

controversy is whether plaintiff No. 2 is also the child of Krishnan, as she was born to the first plaintiff within four months of her marriage with him.

3. The plaintiffs contend that, though the marriage between the first plaintiff and Krishnan was solemnised on 04.02.2001 and the second plaintiff was born on 12.05.2001, i.e., within four months of the marriage, the second plaintiff is nonetheless the biological child of Krishnan. It is specifically pleaded that the first plaintiff and Krishnan were in a relationship even prior to their marriage, and that the second plaintiff was conceived in the course of such relationship. On the strength of the aforesaid pleadings, the plaintiffs assert that, upon the death of Krishnan, the plaint schedule properties devolved upon the plaintiffs and the first defendant in accordance with the rules governing intestate succession, and that each of them is entitled to an equal one-fifth share in plaint item Nos. 1 and 2.

4. The defendants filed a written statement denying the plaintiffs' claim in so far as it relates to the

paternity of the second plaintiff. They specifically contended that plaintiff No. 2 is not the daughter of late Krishnan and disputed the allegation that Krishnan had any premarital relationship with the first plaintiff. According to them, there was no occasion for Krishnan and the first plaintiff to have had access to each other prior to their marriage, particularly since it was an arranged marriage. It was further asserted that, at the relevant time when the child could have been conceived, even the engagement between the parties had not taken place.

5. Upon completion of the trial, the learned Sub Judge held that the plaintiffs had failed to establish the paternity of the second plaintiff. Consequently, the court directed partition of the plaint schedule properties only among plaintiff Nos. 1, 3, and 4, and the first defendant. As the remaining defendants are not Class I heirs of late Krishnan, no relief was granted in their favour.

6. We have heard Sri.R.Sreehari, the learned counsel appearing for the appellants/plaintiffs and Sri.M.P.Ashok Kumar, the learned counsel appearing for the

respondents/defendants.

7. The question that arises for consideration is whether plaintiff No. 2 is the daughter of late Krishnan and, if so, whether she is entitled to a share in his properties.

8. We shall first examine whether the evidence on record is sufficient to sustain the claim advanced by the plaintiffs. In support of their case, the plaintiffs examined the father of the first plaintiff as PW1. PW1 deposed that, at the time of her marriage, the first plaintiff was already pregnant. He further stated that when defendant Nos. 1 and 2, the parents of Krishnan, came to know that the first plaintiff had conceived through Krishnan prior to the marriage, they strongly opposed the marriage and displayed hostility towards her. According to PW1, Krishnan thereupon categorically asserted that he was responsible for the pregnancy and that he would go ahead with the marriage, thereby silencing their objections.

9. PW1 further deposed that from the very birth of the second plaintiff, Krishnan consistently acknowledged and

treated her as his daughter, which finds reflection in several official records, including the passport, pension payment order, and Employees' Provident Fund passbook. Despite being subjected to extensive cross-examination, nothing material was elicited to discredit his testimony. Significantly, there was no cross-examination as to the statement said to have been made by Krishnan as aforementioned, though the alleged premarital relationship itself was vehemently disputed by the defendants.

10. The trial court discarded the testimony of PW1 on the ground that it was not direct evidence. It therefore becomes necessary to examine the evidentiary value of the oral account given by PW1, as noticed above. In this context, Sections 32(5) and 50 of the Indian Evidence Act, 1872 (for short, "the Evidence Act") assume considerable significance. As per Section 32 of the Evidence Act, written or verbal statements made by a deceased person as to certain matters are themselves relevant facts. Statements relating to the existence of any relationship by blood, marriage, or adoption between persons are relevant, provided that the

person making such a statement had special means of knowledge of the relationship and that the statement was made before the dispute was raised. As the person who made the verbal statement is dead, it can be proved only through a person who heard the statement when it was made. Since Krishnan is dead, the verbal statement made by him—he having special means of knowledge of his relationship by blood with the child—at the time when the child was conceived, which was much prior to the commencement of the dispute, is a relevant fact under Section 32(5) of the Evidence Act. When such verbal statements were spoken through PW1, who directly heard them, they are admissible in evidence. In ***Kolangarath Padmanabhan v. Kambarath Omana and Others*** (2008 (1) KLT 223), this Court set out the essential conditions for attracting Section 32(5) in the following terms:

> "Four conditions are to be satisfied before applying sub-section 5 of S.32. Firstly, the statement must be written or verbal and of relevant facts and must have been made by a person who is dead or cannot be found. Secondly, the statement must relate to the existence of any relationship by blood, marriage or adoption. Thirdly the person making the statement must have special means of knowledge as to the relationship in question. Lastly the statement must have been made before the question in dispute was raised."

The evidence of the above nature is an exception to the rule of hearsay, and it is substantive in its character. Thus, the trial court erred in discarding the oral account of PW1 by holding that it was not direct evidence.

11. In the evidence adduced through PW1, there is yet another element which lends more credence to the case of the plaintiffs. He has spoken not merely about the statement made by Krishnan as aforesaid, but also reveals the conduct of Krishnan, which reflects his opinion as to the paternity of the second plaintiff. The above statement of PW1 is relevant and admissible under Section 50 of the Evidence Act, which provides that when the court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct of any person is a relevant fact, if it is relating to the existence of such relationship, provided that the person whose opinion is expressed by conduct is a member of the family or he has special means of knowledge on the subject. When PW1 spoke about the manner in which Krishnan silenced defendant Nos. 1

and 2, his parents, who objected to the marriage and subsequently treated the second plaintiff as his daughter, it reveals his opinion, as expressed by conduct, as to the fatherhood of the second plaintiff. Section 50 of the Evidence Act speaks not merely about the opinion of a person having special knowledge on the disputed relationship. It refers to a judgment or belief, or a conviction, resulting from what one thinks on a particular relationship between two persons, which is manifested through conduct or behaviour indicating the existence of such a belief or opinion. In ***Dolgobinda Paricha v. Nimai Charan Misra*** (AIR 1959 SC 914), the Apex Court succinctly explained this in the following lines:

> "On a plain reading of the section it is quite clear that it deals with relevancy of a particular fact. It states in effect that when the Court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. The two illustrations appended to the section clearly bring out the true scope and effect of the section. It appears to us that the essential requirements of the section are - (1) there must be a case where the Court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant

> fact; (3) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfil the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the "belief" or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may, therefore, be proved."

12. It is true that Section 50 does not expressly state whether such an opinion, expressed through conduct, can be proved by a person other than the one whose conduct reflects that opinion. However, adverting to Section 60 of the Evidence Act, the Apex Court in ***Dolgobinda Paricha*** (supra) clarified that if the conduct of a person relates to something which can be seen or heard, it must be proved by the person who saw or heard it. The Court further held that the requirement under Section 60 that the person holding an opinion must be called to prove it does not circumscribe the scope of Section 50 in such a manner as to require that

opinion expressed by conduct must be proved only by the person whose conduct reflects that opinion. Conduct, being an externally perceptible fact, can be proved either by the testimony of the person himself or by the testimony of another person who personally witnessed such conduct, within the meaning of Section 60 of the Evidence Act. In that context, the Apex Court observed:

> "If we remember that the offered item of evidence under Section 50 is conduct in the sense explained above, then there is no difficulty in holding that such conduct or outward behaviour must be proved in the manner laid down in Section 60 ……. Conduct, as an external perceptible fact, may be proved either by the testimony of the person himself whose opinion is evidence under Section 50 or by some other person acquainted with the fact which expresses such opinion… This, in our opinion, is the true interrelation between Section 50 and Section 60 of the Evidence Act."

13. In view of the legal position enunciated above, the opinion of Krishnan, as expressed through his conduct and spoken to by PW1, is clearly relevant and carries significant probative value. This evidence enables the Court to form a reasoned opinion that the second plaintiff is indeed the daughter of late Krishnan.

14. Certain documentary evidence produced by the

plaintiffs also assumes relevance in this context. Ext.A4 dated 13.05.2010 is a photocopy of the passport of the second plaintiff. It is not in dispute that the second plaintiff was a minor at the time of issuance of the passport. It was submitted by the learned counsel for the appellants that a minor could obtain a passport in the form of Ext.A4 only upon an application signed by both parents. Ext.A7 is the photocopy of the Pension Payment Order issued to Krishnan by the Employees' Provident Fund Regional Office. Since these documents were photocopies, the defendants objected to their marking, and the trial court marked them only tentatively. Before this Court, the plaintiffs filed I.A. No. 1/2019 on 30.05.2019 under Order XLI Rule 27 of the Code of Civil Procedure, seeking permission to produce the original passport and an attested copy of the pension payment order, along with the legal heirship certificate and a declaration form signed even by the first defendant, admitting that the second plaintiff is also a daughter of Krishnan. However, it is decided to admit only the original passport and the attested copy of the

pension payment order, since copies of those documents had already been marked in evidence before the trial court, tentatively.

15. Above all, the law leans strongly in favour of the legitimacy of a child born during the subsistence of a valid marriage. It is undisputed that the second plaintiff was born after the marriage between the first plaintiff and late Krishnan. Even when the birth occurred within four months of the marriage, Section 112 of the Evidence Act raises a conclusive presumption as to the legitimacy of the child, unless it is proved that the parties to the marriage had no access to each other at any time when the child could have been begotten. For the applicability of Section 112, it is not a prerequisite that the period of access should be confined to the post-marital period. The provision is rendered inapplicable only upon proof of non-access "at the time when the child could have been begotten." In ***Kamti Devi v. Poshi Ram*** (AIR 2001 SC 2226), the Apex Court held as follows:

> "The Section when stretched to its widest compass is capable of encompassing even the birth of a

> child on the next day of a valid marriage within the range of conclusiveness regarding the paternity of its mother's husband, but it excludes the birth happened just one day after the period of 280 days elapsing from the date of the dissolution of that marriage."

The burden to establish such non-access squarely rests on the party who seeks to rebut the statutory presumption. In the present case, the evidence adduced by the defendants, the oral testimony of the 1st defendant as DW1, is not sufficient to prove non-access. DW1 merely made a bald assertion that Krishnan and the first plaintiff had no occasion to engage in such a relationship prior to their marriage. On the contrary, the plaintiffs have affirmatively established that there was access between the spouses. The trial court thus committed a manifest error in discarding the plaintiffs' claim by holding that Section 112 of the Evidence Act could not be invoked merely because the child was conceived prior to the marriage.

16. Once it is found that plaintiff No. 2 is the legitimate daughter of late Krishnan, she is entitled to an equal share in the plaint schedule properties along with the other Class I heirs. The finding rendered against plaintiff

No. 2 is therefore legally unsustainable. Therefore, the impugned judgment and preliminary decree are liable to be interfered with.

In the result, the appeal is allowed. The preliminary decree is modified to the extent of partitioning item Nos.1 and 3 properties in the plaint B schedule by metes and bounds into 5 equal shares and allotting one such share each to the plaintiffs and defendant No. 1. The remaining part of the preliminary decree stands as such. No order as to costs.

Sd/-

SATHISH NINAN
JUDGE

Sd/-

P. KRISHNA KUMAR
JUDGE

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