



2026:KER:19608

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

THURSDAY, THE 5TH DAY OF MARCH 2026 / 14TH PHALGUNA, 1947

RFA NO. 17 OF 2025

AGAINST THE JUDGMENT DATED 29.08.2024 IN OS NO.50 OF 2019 OF

PRINCIPAL SUB COURT, PALAKKAD

APPELLANT/DEFENDANT:

SHENO SEBASTIAN,
AGED 42 YEARS,
S/O.LATE SEBASTIAN, C/O.M.D JOSE, MENACHERI HOUSE,
KAVARAPARAMBU, NAITHOD, ANGAMALI,
ERNAKULAM - 683 572 REPRESENTED BY POWER OF ATTORNEY
HOLDER JOSE M.D., AGED 72 YEARS, S/O.LATE DEVASSY,
RESIDING AT MENACHERI HOUSE, NAYATHOD P.O, ANGAMALI,
ERNAKULAM.

BY ADVS.
SRI.S.SUJIN
SMT.NITA.N.S.
SMT.T.N.GIRIJA
SMT.POOJA SURENDRAN
SHRI.N.BHARAT
SHRI.B.BILWIN
SMT.RENU B RAJ.
SHRI.RAJEESH.K.R.

RESPONDENT/PLAINTIFF:

SMITHA MAXON
AGED 45 YEARS
W/O.JOHN MAXON, RESIDING AT RDS OASIS FLAT NO.XB,
NETHAJI NAGAR, KADAVANTRA, COCHIN, ERNAKULAM,
PIN - 682020.



2026:KER:19608

REA NO. 17 OF 2025

-2-

BY ADV SRI.B.JAYASANKER

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON
05.03.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2026:KER:19608

C. R.

SATHISH NINAN &
P. KRISHNA KUMAR, JJ.

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R.F.A. No.17 of 2025

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Dated this the 5th day of March, 2026

J U D G M E N T

Sathish Ninan, J.

The preliminary decree in a suit for partition is under challenge by the defendant.

2. The plaintiff is the sister of the defendant. The plaint schedule properties belonged to their father. The father and the mother are no more. The plaintiff and the defendant are the only legal heirs. The plaintiff seeks for partition and separate possession.

3. The plaint schedule consists of six items of immovable properties. The plaintiff filed a memo withdrawing the relief as against item No.1 without prejudice to the right to institute of a fresh suit since proceedings were pending against the said property under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003, for short “the EFL Act”. So also, pending the suit the parties jointly sold item Nos.2 to



-: 2 :-

5. Therefore, all that remains is item No.6.

4. With regard to schedule item No.6, the defense is that as per Ext.B1 undertaking executed by the plaintiff in favour of the defendant pending the suit, she is entitled for only money consideration as mentioned therein, which is to be paid as and when the property is sold.

5. The trial court held that Ext.B1 does not operate against the plaintiff from seeking partition of the property. Accordingly a preliminary decree for partition of one-half share each, was passed.

6. We have heard Sri.S.Sujin, the learned counsel for the appellant and Sri.B.Jayasanker, the learned counsel for the respondent.

7. The point that arises for determination in this appeal is:-

“Whether Ext.B1 document precludes the plaintiff from seeking partition of plaintiff schedule item No.6 property.”

8. Ext.B1 is an undertaking by the plaintiff to the defendant. As per Ext.B1, the plaintiff has agreed to be



-: 3 :-

satisfied with whatever amount the defendant may give her at the time of the sale of the plaint schedule item No.6 property. Evidently, the terms are vague and uncertain. The period within which the property is to be sold is not stated. Though Ext.B1 was executed on 31.03.2022, even as of now the defendant has not sold the property. It may happen that the defendant may or may not sell the property. So also, Ext.B1 does not mention the amount to be paid to the plaintiff on the sale of the property. It only says, “whatever” amount the defendant is willing to pay.

9. The last sentence in Ext.B1 reads,

“Do it as per your conscience, do not delay this property deal, since it is a good rate.”.

It indicates that the parties intended the sale to take place in the near proximity of time. Though the defendant claimed that the property cannot be dealt with since proceedings are pending against the said property under the EFL Act no evidence is adduced to prove such contention. The plaintiff would on the other hand deny such claim. Suffice to notice that there is no material before the court to find that the failure to sell the property was due to pending EFL proceedings in respect of the property.



-: 4 :-

10. Section 35 of the Indian Contract Act reads thus:-

“35. When contracts become void, which are contingent on happening of specified event within fixed time.—Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced, which are contingent on specified event not happening within fixed time.—Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired, and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.”

In terms of Section 35, when a time period is fixed for the happening of a specified uncertain event, upon which an act is to be done, and at the expiration of the time if the event has not happened, the contract becomes void. Here, no time period is fixed. However, the last sentence in Ext.B1, noticed supra, indicates that the parties contemplated the sale of the property without delay. Though four years elapsed since the execution of Ext.B1 the property is not sold. The defendant may even choose not to sell the property. In *HPA International v. Bhagwandas Fateh Chand Daswani (2004) 6 SCC 537*, the Apex Court while construing an agreement which



-: 5 :-

did not specify the time limit within which the act specified therein was to be performed, taking into consideration the other terms of the contract and the circumstances, held that though no specified time period was stipulated, it is implied that the parties expected the event to happen within a reasonable time. The defendant having not sold the property within a reasonable period, it is to be treated that the contract has become void.

11. So also, Ext.B1 does not mention the amount to be paid to the plaintiff on the sale of the property. It only says, “whatever amount” the defendant is willing to pay. There is no certainty regarding the amount. Section 29 of the Indian Contract Act provides that,

“29. Agreements void for uncertainty- Agreements, the meaning of which is not certain or capable of being made certain, are void.”

12. In *Kalappa Devara v. Krishna Mitter (AIR 1945 Mad. 10)*, a division bench of the Madras High Court was considering a case wherein, with regard to the sale of goods involved, there was an undertaking to pay a certain amount with interest “after deductions as would be agreed upon”. The court held that the term with regard to deduction is vague and uncertain and that Section 29 of the



-: 6 :-

Contract Act is attracted. *Tirumalla Chetti Rangayya Chetti v. Kandalla Srinivasa Raghavacharlu and Ors* (AIR 1929 Mad. 243) was a case where, again a division bench of the Madras High Court was considering the clause in an agreement to sell, providing for sale at a “concession rate”. It was held that the agreement to sell at a “concession rate” is indefinite and must be regarded as a void for indefiniteness. In *Keshavlal Lallubhai Patel and Ors. v. Lalbhai Trikumlal Mills Ltd.* (AIR 1958 SC 512), the Apex Court was considering the contents of a letter involved in that case regarding extension of time for performance of contract. The relevant sentence reads thus :-

“..... Under the circumstances, please note that the delivery time of all your pending contracts with us shall be automatically understood as extended for the period the working is stopped and till the normal state of affairs recurs.”

The Apex Court held the latter portion of the letter to be vague and uncertain and void under Section 29 of the Indian Contract Act.

13. Under Ext.B1, there is no certainty with regard to the amount. The quantum is left to the sweet will of the defendant. The term is not certain, nor is it capable of being made certain. It is also to be noticed that, the plaintiff could not have



2026:KER:19608

-: 7 :-

enforced the agreement since the term is vague and uncertain, and could not have been made certain.

14. Hence for the reasons stated, we find that Ext.B1 cannot be maintained to negate the plaintiff's claim for partition. The trial court was right in holding so.

There is no merit in the appeal. The appeal fails and is dismissed.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
P. KRISHNA KUMAR
JUDGE

kns/-

//True Copy//

P.S. To Judge