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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 30TH DAY OF MARCH 2026 / 9TH CHAITHRA, 1948

RSA NO. 882 OF 2012

AGAINST THE JUDGMENT AND DECREE DATED 23.02.2012 IN
AS NO.219 OF 2009 OF ADDITIONAL DISTRICT COURT, KOTTAYAM
ARISING OUT OF THE JUDGMENT AND DECREE DATED 08.04.2009
IN OS NO.321 OF 2008 OF MUNSIF COURT, VAIKOM

APPELLANT/RESPONDENT/DEFENDANT:

VARKEY VARGHESE
AGED 62 YEARS, S/O.VARKEY RESIDING AT PARAYIL
HOUSE PADINJAREKARA P.O VALLAKOM NADUVILE
VILLAGE VAIKOM TALUK KOTTAYAM DISTRICT

BY ADV
SHRI.GEORGE JOSEPH (ITTANKULANGARA)

RESPONDENT/APPELLANT/PLAINTIFF:

KATHREENA
AGED 65 YEARS, W/O.JOSEPH RESIDING AT
THATTARYPARAMBIL HOUSE (AKSHAYA BHAVAN)
THALAYOLAPARAMBU P.O CHIRRATTUKAVU ROAD
VADAYAR VILLAGE VAIKOM TALUK KOTTAYAM DISTRICT
686 142

BY ADV
SHRI.M.A.ASIF

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 30.03.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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“C.R”

EASWARAN S., J

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Dated this the 30th day of March, 2026

J U D G M E N T

Interpretation of a settlement deed executed by a father in favour of his daughter containing a restrictive covenant that if she ‘marries’ or becomes a ‘nun’, the property will revert back to her brother comes up for consideration in this appeal.

2. Suit filed for declaration of title and possession at the instance of the respondent / plaintiff was dismissed on the ground that the suit is barred by limitation. On appeal by the plaintiff, the First Appellate Court reversed the judgment and decree and held that the plaintiff is entitled for the relief and decreed the suit.

3. The plaintiff was given an extent of 10 cents pursuant to a settlement deed dated 13.09.1965 by her



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father. Three schedules were drawn up in the settlement deed. The plaintiff was conferred right and title over the B schedule property. The dispute in the appeal centers around a clause in the settlement deed, wherein the father inserted a clause by stating that if the plaintiff got married or becomes a nun, the entire rights in the property would extinguish and would later devolve upon the defendant. The plaintiff got married on 23.06.1971. The father died in 1983. Later the plaintiff was in Germany, after her marriage. Subsequently, the plaintiff came to know that the defendant had in a clandestine manner mutated the property without any authority and was enjoying the property. Hence the suit for declaration was instituted stating that the offending clause in the settlement deed, which bars the plaintiff from enjoying the property because of her marriage, is void ab initio. The defendant resisted the suit by contending that the suit is barred by limitation. It was further contended that there was no cause of action for the plaintiff to file the



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suit. It was further pointed out that the suit property was mutated by the defendant soon after the marriage of the plaintiff and that the property was wholly enjoyed by the defendant and it was mortgaged with a third party and the usufructs were being collected from the property by the defendant. On behalf of the plaintiff, Exts.A1 to A4 documents were marked and PW1 and PW2 were examined. On behalf of the defendant, Exts.B1 to B5 were marked. Exts.X1 and X2 were the third party exhibits. There was no oral evidence adduced by the defendant.

4. The trial court on appreciation of oral and documentary evidence came to the conclusion that the impugned condition in the settlement deed is perfectly valid and that the suit being instituted in the year 2008 is hit by Article 58 and 113 of the Limitation Act, 1963, and accordingly dismissed the suit. Aggrieved, the plaintiff preferred an appeal, as A.S No.219/2009, before the Additional District Court, Kottayam. The First Appellate Court on re-appreciation of the evidence on record came



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to the conclusion that the conditions under Section 31 of the Transfer of Property Act, 1882, does not apply and that the plaintiff is entitled to enjoy the property as her own. The plea of limitation was overruled inasmuch as the impugned recitals in the gift deed were held to be void. Accordingly, the appeal was allowed and the suit was decreed. Hence the present appeal.

5. On 20.07.2012, while admitting the appeal this Court framed the following substantial questions of law for consideration:-

- i) Did not the lower appellate court err in not construing the condition mentioned in Ext.A1 settlement deed in consonance with Section 21 consequent to Section 31 of T.P Act?
- ii) Whether the court below failed to interpret property Ext.A1, title deed in the light of the condition mentioned in Ext.A1?

6. Heard Shri.George Joseph Ittan Kulangara, the learned counsel appearing for the appellant and Shri.M.A.Asif, the learned counsel appearing for the respondent.



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7. The learned counsel appearing for the appellant contended that the First Appellate Court erred egregiously in construing the nature of the gift. According to the learned counsel for the appellant, the condition attached to the gift of liability or reservation made therein is valid insofar as the enjoyment of the gift is concerned. In support of his contention relied on the decisions of the Single Bench of this Court in **Thankappan v. V.Chellappan** [2020 (4) KHC 98], in **Kamalakshan v. Usha** [2025 KHC 206] and also in the decision of the Hon'ble Supreme Court in **Smt.Rukhamanbai v. Shivram and Others** [1981 KHC 691] and contended that under a deed of settlement if a person has been given life interest of the property with the remainder in the children of the estate holder, the gift does not take effect unless the conditions specified therein are met. He further pointed out that the suit is barred under Article 58 of the Limitation Act, 1963, because the plaintiff had sued for declaration only in the



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year 2008. Further it is an admitted case of the plaintiff that the defendant is in possession of the property and therefore the plaintiff ought to have sought for recovery of possession of the property as well.

8. Per contra, the learned counsel appearing for the respondent / plaintiff supported the findings of the First Appellate Court and contended that the First Appellate Court had correctly appreciated the law and the evidence on the point and had come to the correct conclusion. The settlement deed had taken effect as soon as it was executed in the year 1965 and therefore any condition which is incorporated in the settlement deed, which impairs the right of the donee from enjoying the property is void. Therefore, the learned counsel for the respondent pointed out that the suit for declaration was perfectly valid inasmuch as the conditions incorporated under Ext.A1 gift deed was void.

9. I have considered the rival submissions raised across the Bar, perused the judgments rendered by the



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courts below and also the records of the case.

10. One of the primary reasons for non-suiting the plaintiff by the trial court is that the property stands mutated in the name of the defendant. It is now trite law that the mutation will not confer any right over the property in question. Moreover, the defendant also has not adduced any evidence to show that the mutation effected in respect of the plaint schedule property was with prior notice to the plaintiff. That be so, the mere fact that the defendant had effected mutation over the plaint schedule property is not a ground to deny the relief to the plaintiff.

11. Coming to the contention that the suit is barred by limitation, this Court fails to see as to how the suit for declaration is weak by Article 58 of the Limitation Act, 1963. Admittedly, the settlement deed has taken effect on its execution. What is now pointed out is that the settlement deed is subject to certain conditions specified therein. The larger question before this Court is whether



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the conditions can nullify the rights conferred on the plaintiff.

12. Section 26 of the Indian Contract Act, 1872, provides that agreement in restraint of marriage is void. Section 26 of the Indian Contract Act, 1872, reads as under:-

Agreement in restraint of marriage, void.—

Every agreement in restraint of the marriage of any person, other than a minor, is void.

13. Section 4 of the Transfer of Property Act, 1882, makes the provision of the Contract Act and the provisions of the Registration Act applicable to the provisions of the Act. Section 4 of the Transfer of Property Act, 1882, reads as under.

Section 4- Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act.—

The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872).

[And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, [1908 (16 of 1908)].]



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14. Section 25 of the Transfer of Property Act, 1882, deals with a conditional transfer. Section 25 of the Transfer of Property Act, 1882, reads as under-

25. Conditional transfer.—An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

15. When Section 4 and Section 25 of the Transfer of Property Act, 1882, is read in conjunction, it is beyond cavil that any condition incorporated in a deed of transfer which is forbidden in law or opposed to public policy is void and cannot take effect. Viewed in the above perspective, certainly the restrictive covenant in the settlement deed that the property will revert back to the son, if the plaintiff marries cannot be upheld by the courts and is void and the plaintiff is entitled to ignore the same.

16. Similar is the effect of the second condition that the plaintiff will lose the property if she becomes a nun.



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Since the said contingent did not happen, further deliberation is not required.

17. Yet another aspect is that, the plaintiff is entitled to ignore the clause in the settlement deed because of operation of Section 11 of the Transfer of Property Act, 1882. Section 11 of the Transfer of Property Act, 1882, provides that when a transfer is created absolutely in favour of a person, but the transfer is hedged by any subsequent condition which restricts the enjoyment of the property, the transferee is entitled to ignore the same. Section 11 of the Transfer of Property Act, 1882, reads as under-

11. Restriction repugnant to interest created.—

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

[Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to



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enforce such direction or any remedy which he may have in respect of a breach thereof.]

18. However, what is pointed out by the learned counsel for the appellant is that when no absolute right is created by the settlement deed then no interest flows into the hands of the plaintiff. In support of the above proposition, decision of the Single Bench of this Court in **Kamalakshan Vs Usha [2025 KHC 206]** is relied on.

19. In the above decision this Court held that when absolute interest was not created under a deed, the provisions of Section 11 of the Transfer of Property Act, 1882, are not attracted. However, in the present case, the transfer in favour of the plaintiff cannot be termed as conditional. It is an absolute transfer. However, a further clause is incorporated that, if she becomes a nun or gets married she will lose the interest in the property. When a condition of restraint is imposed in a deed which is otherwise prohibited under law, the said condition becomes void and therefore, the transfer in favour of the plaintiff



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becomes absolute and not conditional. Therefore, facts presented before this court in **Kamalakshan (supra)** are clearly distinguishable and hence the decision has no application.

20. In **Thankappan Vs. V.Chellappan [2020 (4) KHC 98]** this court was called upon to consider whether a condition reserving life interest of the donor and his wife is a conditional gift or not. This court held that the reserving a life interest in a property does not make the gift conditional but it is only a condition attached to the gift deed.

21. This court is unable to agree with the contention of the appellant that in the present case also, the settlement deed must be construed as a conditional one. The infirmity attached to the deed is that, it incorporates a condition which is forbidden by law and opposed to public policy. If a settlement deed contains a clause which is forbidden by law and against public policy, the said clause becomes inoperative and the donee is entitled to



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ignore the condition and take the property dehors the condition.

22. That apart, the contention of the defendant that the conditions specified under Section 31 of the Transfer of Property Act, 1882, are attracted also does not appear to be sound in the present case. The First Appellate Court has correctly found that the conditions specified under Section 31 of the Transfer of Property Act, 1882, are not attracted in the present case. In the present case since a condition which is prohibited under law is incorporated in the deed, the provisions of Section 31 of the Transfer of Property Act, 1882, has no application. That be so, this Court cannot agree with the submissions of the learned counsel for the appellant and hold that the findings rendered by the First Appellate Court are perverse warranting interference under Section 100 of the Code of Civil Procedure, 1908.

Accordingly, the substantial questions of law are answered against the appellant and it is held that the



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offending condition in Ext.A1 settlement deed is clearly void in terms of Section 26 of the Indian Contract Act, 1872, and thus hit by Section 25 of the Transfer of property Act, 1882. Hence, the provisions of Section 31 of the Transfer of property Act, 1882, are not attracted. The First Appellate Court has correctly appreciated the conditions under Ext.A1 settlement deed.

Resultantly, this appeal fails and the same is dismissed.

Sd/-
EASWARAN S.
JUDGE

AMR