



2026:KER:18297

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 23RD DAY OF FEBRUARY 2026/4TH PHALGUNA, 1947

RSA NO. 1065 OF 2013

AGAINST THE JUDGMENT AND DECREE DATED 12.10.2012 IN AS
NO.240 OF 2009 OF II ADDITIONAL DISTRICT COURT, ERNAKULAM
ARISING OUT OF THE JUDGMENT AND DECREE DATED 28.02.2009 IN
OS NO.463 OF 2002 OF II ADDITIONAL MUNSIFF COURT,
ERNAKULAM

APPELLANT/APPELLANT IN A.S/PLAINTIFF:

VARNINI KARTHIKEYAN,
AGED 59 YEARS
W/O. KARTHIKEYAN, VELIYIL HOUSE UDAYAMPEROR,
NADAKKAVU P.O., MANAKUNNAM VILLAGE, KANAYANNUR
TALUK.

BY ADVS.
SHRI.ABRAHAM P.GEORGE
SHRI.M.RAJENDRAN NAIR
SMT.M.SANTHY

RESPONDENTS/RESPONDENTS/DEFENDANTS:

1 PADMAKARAN,
S/O. LATE NARAYANAN, VELLEPPARAMBIL ,
UDAYATHUMVATHIL DESOM, KUMBALAM VILLAGE,
KANAYANNUR TALUK.



2026:KER:18297

R.S.A No.1065 of 2013

2

- 2 RAGHAVAN,
S/O. LATE NARAYANAN, VELLEPPARAMBIL ,
UDAYATHUMVATHIL DESOM, KUMBALAM VILLAGE,
KANAYANNUR TALUK.
- 3 BHASKARAN,
S/O. LATE NARAYANAN, VELLEPPARAMBIL ,
UDAYATHUMVATHIL DESOM, KUMBALAM VILLAGE,
KANAYANNUR TALUK.
- 4 VIBASHU,
S/O. LATE NARAYANAN, VELLEPPARAMBIL ,
UDAYATHUMVATHIL DESOM, KUMBALAM VILLAGE,
KANAYANNUR TALUK.
- 5 ANIRUDHAN,
S/O. LATE NARAYANAN, VELLEPPARAMBIL ,
UDAYATHUMVATHIL DESOM, KUMBALAM VILLAGE,
KANAYANNUR TALUK.
- 6 DARMINI,
W/O. PARAMESWARAN, KARIVELIPARAMBIL,
UDAYAMPERROOR P.O., MANAKUNAM VILLAGE,
KANAYANNUR TALUK.
- 7 SAROJINI,
W/O. LATE VANAJAKSHAN, EDATHIL HOUSE,
CHEPPANAM, KUMBALAM VILLAGE, KANAYANNUR TALUK.
- 8 KANTHARDHINI, (DIED)
W/O. SHANMUGHAN, POZHINJIYIL HOUSE,
UDAYATHINVATHIL, PANAGAD P.O., PIN- 682 506

[IT IS RECORDED THAT R8 IS A DEAD PERSON AS PER
ORDER DATED 02/092021 IN RSA]
- 9 SHANMUGHAN,
POZHINJIYIL HOUSE, UDAYATHINVATHIL, PANAGAD
P.O., PIN 682 506.



2026:KER:18297

R.S.A No.1065 of 2013

3

**10 ANJALI,
D/O. SHANMUGHAN, POZHINJIYIL HOUSE,
UDAYATHINVATHIL, PANAGAD P.O., 682 506.**

**BY ADV
SRI.K.R.VINOD**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 23.02.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



“C.R”

EASWARAN S., J

R.S.A No.1065 of 2013

Dated this the 23rd day of February, 2026

J U D G M E N T

The plaintiff in a suit for partition has come up with the present appeal, aggrieved by the dismissal of the suit concurrently by the courts below.

2. The brief facts necessary for the disposal of the appeal are as follows:-

2.1 The plaint schedule property originally belonged to one Narayanan and Devaki. Narayanan and Devaki purchased the aforesaid property having an extent of 81 cents by sale deed No.675/68 of SRO Ernakulam. During the lifetime of Narayanan and Devaki, they together executed a Joint Will on 23.01.1992 as Will No. 7/III/1992. In terms of the Will, both Narayanan and Devaki



2026:KER:18297

R.S.A No.1065 of 2013

5

bequeathed their respective shares in the property in favour of their sons, defendants 2 to 6. Narayanan died intestate on 05.12.1995. After the death of Narayanan, Devaki executed a registered settlement deed No.1709/97 of SRO Maradu, in favour of her daughters, namely the plaintiff and defendants 7 to 9, assigning her entire share. However, it appears that late Devaki proceeded to cancel the settlement deed by way of a Revocation Deed on 11.08.1997 by conferring her right in favour of her sons. Claiming that the plaintiff and the defendants are in joint possession of the property, the suit was instituted by the appellant seeking a partition of the plaint schedule property by metes and bounds, allocating 15/80 share in the plaint scheduled property. The defendants resisted the suit contending that the suit is not maintainable. It was further contended that the Will in question is a joint and mutual Will and therefore one of the testators, namely the 1st defendant, could not have settled her share in favour of



2026:KER:18297

R.S.A No.1065 of 2013

6

her daughters. Further contended that the execution of the settlement deed was vitiated because of fraud exerted on the part of the plaintiff and immediately after realising the same, the 1st defendant cancelled the deed. On behalf of the plaintiff, Exts.A1 and A2 were produced and PW1 and PW2 were examined. On behalf of the defendants, Exts.B1 to B5 were produced and DW1 to DW3 were examined. Ext.X1 is the certified copy of the Will produced from the Sub Registrar Office and Ext.X2 is the tax receipt produced by the Secretary of Kumbalam Grama Panchayat.

2.2 The trial court framed the following issues for consideration:-

- 1) Is the property partible?
- 2) Whether plaintiff is entitled to get partition of plaint schedule property?
- 3) If so what is her share?
- 4) Whether plaintiff is entitled to get mesne profits?
- 5) Relief and costs?



2026:KER:18297

R.S.A No.1065 of 2013

7

2.3 Apart from the above additional issues were also framed, which are as follows:-

- 6) Whether will No.7/1992 of SRO Maradu is a genuine one?
- 7) Whether settlement deed No.1709/97 of SRO Maradu (Ext.A2) is a genuine one?
- 8) Whether revocation deed No.2617/1992 Maradu SRO (Ext.B2) is a valid document?
- 9) Whether settlement deed No.3166/1997 (Ext.B3) of Maradu is valid?

2.4 The trial court held that Ext.A2 and Ext.B3 settlement deeds are not valid, especially since Devaki had no absolute right in the property. Therefore, she cannot execute settlement deeds like Ext.A2 or Ext.B3. Thereafter, the trial court proceeded to consider the impact of Ext.B5 Will and held that it is a joint and mutual Will and therefore on the death of Devaki, the property devolved upon the sons as per the terms and conditions of the Will and accordingly, dismissed the suit. Aggrieved, the plaintiff preferred A.S No.240/2009 before the II Additional District Court, Ernakulam. The First Appellate



2026:KER:18297

R.S.A No.1065 of 2013

8

Court on the other hand proceeded to hold that there is no enabling clause under Ext.B5 Will, by which the surviving testator is given absolute possession of the property of her husband, still proceeded to hold that Ext.B5 is a mutual Will and not a joint Will. As regards Ext.A2 settlement deed, the First Appellate Court found that, the very fact that the 1st defendant proceeded to execute Ext.B2 cancellation deed, shows that Ext.A2 settlement deed has been accepted, but then went on to hold that, since the 1st defendant had no right to execute the settlement deed, the claim of the plaintiff based on the settlement deed does not arise for consideration. Accordingly, the appeal was dismissed and hence the present appeal.

3. On 10.09.2013, while admitting this appeal, this Court framed the following substantial questions of law for consideration:-



2026:KER:18297

R.S.A No.1065 of 2013

9

1. Does the court below go wrong in interpreting the terms of Ext.B5 Will?
2. Is the mother (one of the testators) who survived the other testator (father) entitled to revoke the Will and execute a settlement deed?

4. In the light of the findings rendered by the First Appellate Court, it will suffice if this Court proceeds to interpret the scope of Ext.B5 Will. If on interpretation of Ext.B5 Will, this Court finds that it is a joint and mutual Will, necessarily, the appeal should fail. But on contrary, if it is found that it is a joint Will, and that the surviving testator had not derived any benefit out of the said Will, necessarily, the substantial questions will have to be answered in favour of the appellant. In the above back drop, this Court proceeds to consider the respective contentions.

5. Heard Shri.Abraham P. George, the learned counsel appearing for the appellant and Shri.K.R.Vinod, the learned counsel appearing for respondents 1 and 3 to 5.



2026:KER:18297

R.S.A No.1065 of 2013

10

6. Shri.Abraham P. George, the learned counsel appearing for the appellant contended that there is no warrant for the observation made by the First Appellate Court that Ext.B5 Will is joint and mutual. Both the courts below erred egregiously in interpreting the decision of this Court in **Mathew v. Vasudevan** [1990 KHC 626]. It is further contended that the finding of the courts below that Ext.A2 settlement deed has not been accepted, is also incorrect, since there is a recital in the document itself, which shows that the parties have taken the property. It is further pointed out that once a registered settlement deed is executed, the donee cannot thereafter unilaterally cancel the settlement deed. In support of his contentions relied on the decisions of this Court in **Ambujakshyamma v. Kesavan Kamalasanan** [2010 (3) KLT SN 10], **Vijayalakshmi v. Gopalakrishna Menon** [2010 (4) KLT SN 25], **Asokan v. Lakshmikutty** [2008 (1) KLT 54 (SC)], **Saseendran v. Ponnamma** [2025 KLT OnLine 1577



2026:KER:18297

R.S.A No.1065 of 2013

11

(SC)].

7. Per contra, Shri.K.R.Vinod , the learned counsel appearing for respondents 1 and 3 to 5 supported the concurrent findings rendered by the courts below and contended that the concurrent findings are not vitiated by any perversity and therefore the conditions enabling this Court to exercise its powers under Section 100 of the Code of Civil Procedure are not available. Referring to the decision of this Court in **Mathew v. Vasudevan** [1990 KHC 626], the learned counsel for respondents 1 and 3 to 5, contended that if on construction of the Will, it is found that the surviving testator had derived benefits out of the same, the surviving testator cannot unilaterally transfer her share under the Will. The effect of such transfer would necessarily destroy the Will, which is impermissible. Referring to the contents of Ext.B5 Will, the learned counsel further pointed out that even under the Will, any revocation of cancellation can only be done jointly by both



2026:KER:18297

R.S.A No.1065 of 2013

12

the father and the mother and therefore execution of Ext.A2 settlement deed is clearly without any power and the said fact has been correctly appreciated by the First Appellate Court. Dehors Ext.A2 settlement deed, the appellant will not get any right over the plaint schedule property and therefore, the findings rendered by the courts below are perfectly correct and does not call for any interference.

8. I have considered the rival submissions raised across the Bar, perused the judgments rendered by the courts below and records of the case.

9. As stated above, the consideration of this appeal hinges on construction of Ext.B5 Will. The interpretation of the opening paragraph of the 'Will', will determine how this Court will proceed further in this appeal. It is felt expedient to extract the portion of the Will:-

23.01.1992 ഓരായിരത്തി തൊള്ളായിരത്തി തൊണ്ണൂറ്റിരണ്ടാമാണ്ടു ജനുവരി മാസം ഇരുപത്തിമൂന്നാം തീയതി കണയന്നൂർ താലൂക്ക് കമ്പളം വില്ലേജ് ഉദയത്തും വാതിൽ ദേശത്ത് വെള്ളെപ്പറമ്പിൽ താമസിക്കും



പൊറ്റക്കൽ അച്ഛതൻ മകൻ സ്വസ്തം 81 വയസ്സ് 1. നാരായണൻ , ടിയിൽ താമസം 1-ആം നമ്പ്രകാരൻ ഭാര്യ 74 വയസ്സ് സ്വസ്തം 2. ദേവകി എന്നിവരായ ഞങ്ങൾ ഞങ്ങളുടെ സ്വമനസ്സാലെയും, സ്വബോധത്തോടെയും അന്യപ്രേരണകൂടാതെയും എഴുതിവെച്ച വീൽപത്രം. ഇത് ഞങ്ങളുടെ കാലശേഷം മാത്രം പ്രബലതയിൽ വരുന്നതും, ഇതിനെ റദ്ദാക്കുവാനോ, ഭേദഗതി ചെയ്യുവാനോ, ഞങ്ങൾക്ക് പൂർണ്ണ അധികാരവും, സ്വാതന്ത്ര്യവും ഉള്ളതും ആകുന്നു.

ഞങ്ങളുടെ കാലശേഷം ഞങ്ങളുടെ അവകാശികൾ തമ്മിൽ യാതൊരു തർക്കങ്ങൾക്കും സ്റ്റർദ്ധകൾക്കും എടവരാതെ ഐക്യമത്യമായും, പരസ്പരസ്നേഹവിശ്വാസത്തോടും കൂടിയും കഴിയേണ്ടതാണെന്ന് ആദ്യമായി അവരോടു ഉപദേശിക്കുന്നു. എന്റെ അവകാശികൾ ഓരോരുത്തർക്കും ഞങ്ങൾ വ്യവസ്ഥ ചെയ്തുവെച്ചിട്ടുള്ള വസ്തുതലുകളെ കൂടുതൽ കുറവു എന്നതിനെ പറ്റിയാതൊരു ചിന്തകൂടാതെ സന്തോഷത്തോടും തൃപ്തിയോടും കൂടി ഞങ്ങളുടെ കാലശേഷം ഓരോരുത്തരും കൈവശം എടുത്ത് ജന്മപേരിൽ പതിപ്പിച്ചു പട്ടയം വാങ്ങി സകലക്രയവിക്രയസർവ്വ സ്വാതന്ത്രത്തോടും കൂടി അടക്കി അനുഭവിക്കേണ്ടതാകുന്നു.

10. A reading of the aforesaid clause leads to following points:-

- (a) It takes effect only on the death of both the testators.
- (b) It reserves right on the testators either to revoke or recall the Will.

11. Both the Courts below held that the above clauses leads to an inference that the 'Will' is joint and mutual. Read as may, this Court could not find any clause



2026:KER:18297

R.S.A No.1065 of 2013

14

under Ext.B5 Will, which enabled the 1st defendant, Devaki, to hold the share of her husband, Narayanan, on the death of her husband. But on the contrary, it is stated that on the death of the testator, the share of the deceased testator will go to the legatee and they should hold the property in common.

12. It is beyond cavil that Devaki was a co-owner of the property in question covered by Ext.B5 Will. Therefore, it is completely incomprehensible to conclude that on execution of Ext.B5 Will, the right of Devaki as a co-owner is tied along with the conditions prescribed in the Will and therefore she cannot wriggle out of the conditions and resile from it.

13. It is pertinent to mention that the First Appellate Court, while interpreting Ext.B5 held that there is no clause under Ext.B5 Will, by which Devaki is entitled to hold the property representing the share of her husband on the death of the testator. It is worthwhile to



2026:KER:18297

R.S.A No.1065 of 2013

15

extract the findings in paragraph 14 of the judgment of the First Appellate Court.

14. It is true that there is no recital in Ext.B5 enabling the surviving testator to enjoy the entire property, ie, confirming right as a legatee on the surviving testator. As pointed out above, going by the recitals in Ext.B5, bequeath can take place only on the death of both the testators. If so there is an implied condition that on the death of one of the survivors, the other could enjoy the property without having right of alienation. Therefore an agreement between the parties to make a joint disposition of the property is quite evident from the terms in Ext.B5. It is more substantiated from the averments in the written statement in which one of the testators, Smt. Devaki also signed when she herself asserted that the intention while executing Ext.B5 was to create a mutuality and Ext.A2 settlement deed was executed under coercion and misrepresentation, there need not be any hesitation to find that Ext. B5 was executed with a view to create a mutual will. The direction in it to pay Rs.8,000/- each to the daughters by contributing Rs.3,200/- by the sons also an indication to such an intention of the testators. Accordingly, I hold that applying the principles laid down in the above said decisions, Ext.B5 can be held a mutual will and not a joint will. So I answer this point against the appellant.



14. The moment the First Appellate Court concluded that the surviving testator did not hold the share of the deceased testator, the further findings that it is a mutual Will, is completely unacceptable.

15. Law relating to joint and mutual Will derives its origin in Roman Dutch law. But, a joint or a mutual Will is not wholly unknown to the Indian law, though only very few cases have come up for decision before the courts in India.

16. The law relating to joint Wills and mutual Wills is best stated in **Halsbury's Laws of England, vol 39, 3rd edition, at page 846, paragraph 1279 and Page 847, paragraph 1280:- Lord Simon's view is extracted as follows.**

“ A joint will is a will made by two or more testators contained in a single document, duly executed by each of testator and disposing either of their separate properties, or of their joint property. It is not, however, recognized in English law as a single will. It is in effect two or more wills; it operates on the death of each testators as his will disposing of his own



separate property on the death of the first to die; it is admitted to probates as his own will and on the death of the survivor, if no fresh will has been made, it is admitted to probate on the disposition of the property of the survivor.

Wills are mutual when the testators confers upon each other reci-procal benefits and there may be absolute benefits in each other's property, or they may be life interest, with the same ultimate disposition of each estate on the death of the survivor."

17. A joint will is a single testamentary instrument constituting or containing the will of two or more persons and jointly executed by them; while mutual wills are the separate wills of two or more persons which are reciprocal in their provisions and executed in pursuance of compact or agreement between two or more persons to dispose of their property to each other or to third persons in a particular mode or manner. Mutual wills as distinct from joint wills are sometimes described as reciprocal wills. In describing a will the adjective "mutual" or "reciprocal" is used to emphasize



2026:KER:18297

R.S.A No.1065 of 2013

18

and denote the contractual element which distinguishes it from a joint will.”

18. In **K. Govindan Kaimal v. T.T.Lakshmi Amma** [AIR 1959 SC 71], the distinction between a mutual Will and a Joint Will is pointed out by the Hon’ble Supreme Court as follows:-

“ A will is mutual when the two testators confers upon each other reciprocal benefits as by either of them constituting the other his legatee, that is to say, when the executants fills the roles of both testator and legatee towards each other. But where the legatees are distinct from the testators, there can be no position of a mutual will.”

19. In England, the courts have evolved their own principles of law regarding joint and mutual wills and so far as English law is concerned, the principles appear to be fairly well settled. In regard to joint and mutual Wills, the decisions in England have recognized a distinction in the powers and jurisdiction of a court issuing a probate and a court whose jurisdiction has been invoked by a party for the enforcement of the rights based upon the



agreement embodied in a mutual will.

20. In the case of a mutual Will, if there is an agreement that neither of the testators shall have power to revoke, and the surviving testator receives the benefits from the deceased under the mutual Will. The survivor is not entitled to revoke the Will when the first testator had died leaving the mutual Will unaltered and un-revoked in pursuance to the agreement and in the hope and trust that the mutual Will will be adhered to by the survivor. If, however, the survivor, in breach of faith, revokes a mutual Will by making a new Will, it is the new Will which will have to be necessarily admitted to probate so far as the properties of the survivor are concerned. In an application for probate the Court has no jurisdiction to enquire into the nature of the rights of the testator in the property covered by the Will. If the Court is satisfied about the due and proper execution of a Will by a testator in a sound disposing state of mind, it is bound to grant a probate of



2026:KER:18297

R.S.A No.1065 of 2013

20

the Will. (see **Halsbury, Lord Simonds, 3rd Edition, page 853, paragraph 1299**).

21. As far as American Law is concerned, the law is discussed in **Corpus Juris Secundum, Volume 97**, wherein the limited jurisdiction of the court issuing the probate in contract to the general jurisdiction exercised by the Court under normal procedure when the beneficiaries under the earlier Will commence an action is emphasized. At page 311 of Volume 97, Corpus Juris, the law in America is stated as follows:-

“A court of probate cannot admit a mutual will to probate where it has been revoked by the testator, and cannot enforce an agreement to make mutual wills by ordering probate of a will which was revoked in breach of such agreement. However, it is well settled that, where the revocation was wrongful and unauthorized and the testator had devised or bequeathed his property in a manner other than that contemplated by the agreement on which the mutual will was founded, a court of enquiry, by reason of its extraordinary power to enforce specific performance of contracts and to prevent



2026:KER:18297

R.S.A No.1065 of 2013

21

frauds, will ordinarily enforce such agreement, in order to prevent fraud or injustice by decreeing a specific performance of the agreement or by fastening or impressing a trust on the property in favour of the beneficiaries of the will revoked in violation of the arrangement....”

22. In **K. Govindan Kaimal** (supra), the Hon’ble Supreme Court held that the Will appears to be joint and not a mutual Will. It would thus appear that the Hon’ble Supreme Court did not think it necessary that in order to make the mutual Will revocable both the conditions (a) benefit and (b) agreement not to revoke, except with the mutual consent should be concurrently satisfied in every case. In other words, that it is enough for a mutual Will to be irrevocable, if the surviving testator receives the benefit of the property of the deceased under the mutual Will.

23. In **Bhawani Prasad v. Surendra Bala** [A.I.R 1960 All. 126], the Division Bench of the Allahabad High



2026:KER:18297

R.S.A No.1065 of 2013

22

Court had taken a view that in order to make the joint mutual will irrevocable by the survivor both the conditions must be concurrently satisfied.

24. In **Mathew v. Vasudevan** [1990 KHC 626], a single bench of this Court held that since the surviving testator got the possession of the entire property on the death of her husband, the Will must be construed as one a joint and mutual Will and it must be construed that it is irrevocable.

25. Both sides raised their own perspective on the interpretation placed by the learned Single Judge in the above decision. According to the learned counsel for the appellant, in the present case, the 1st defendant did not receive any benefit and therefore the Will must be construed as one a joint Will alone and in which case, the 1st defendant was perfectly justified in executing Ext.A2 settlement deed.



2026:KER:18297

R.S.A No.1065 of 2013

23

26. On the other hand, it is the specific case of Shri.K.R.Vinod, the learned counsel appearing for respondents 1 and 3 to 5 that the reading of Ext.B5 Will would show that there is an implied possession being vested with Devaki on the death of her husband Narayanan and therefore the Will must be construed as a joint and mutual Will, thus making it irrevocable.

27. On an anxious consideration of the various case laws cited across the Bar and as discussed above by this Court, certain indisputable facts stare at the face of the case. It is undeniable that no mutual benefit was conferred upon both the testators under Ext.B5 Will. In fact the findings in paragraph 14 of the judgment of the First Appellate Court clearly shows that the First Appellate Court also concluded that there is no mutual benefit granted under Ext.B5 Will and goes on to hold that on the death of Narayanan, the 1st defendant did not enjoy the entire property. The question herein is whether, after



2026:KER:18297

R.S.A No.1065 of 2013

24

concluding that the surviving testator did not receive the entire property on the death of the other testator, was the First Appellate Court justified in holding that because of the further clause that the bequeath can take place only after the death of both testators, there is an implied condition that on the death of one of the survivors the other could enjoy the property without having a right of alienation.

28. It is surprising to note that the First Appellate Court with total disregard to the settled principles of interpretation of the Will proceeded to rely on the written statement of the 1st defendant, Devaki, wherein, she herself has asserted that the intention while executing Ext.B5 Will was to create a mutuality and Ext.A2 was executed under coercion and misrepresentation and therefore Ext.B5 is in fact a mutual Will. As stated above there is no warrant for the above observation in the light of the principles laid down by the Hon'ble Supreme Court,



2026:KER:18297

R.S.A No.1065 of 2013

25

as well as by this Court and also on the basis of the precedents discussed above.

29. Once the First Appellate Court found that there is no enabling clause in the Will, which entitled the 1st defendant, Devaki, to enjoy the property, it could not have proceeded to hold that there is an implied right in favour of Devaki to hold the property exclusively till her death. Once the testators having in no uncertain terms, reduced their intention into writing and conferred the right on the surviving testator to cancel or modify the conditions of the Will, there is no warrant for presumption of mutuality in the Will. Even, the nature of dispossession shows that, it is the respective shares which have been assigned in favour of the legatees. The mere fact that the Will takes effect only on the death of both the testators, is not a ground to hold that what was intended between the parties is a mutuality. The principles of mutuality cannot be inferred and implied by the courts, but rather it must be depicted



2026:KER:18297

R.S.A No.1065 of 2013

26

on a plain reading of the Will. That be so, it is inevitable for this Court to conclude that the contrary findings rendered by the courts below are clearly unsustainable under law.

30. The decision in **Mathew** (supra) cannot be construed as one applicable to the facts of the present case. The law as regards a joint and mutual Will cannot be applied in a rigid manner and it is not in its explicable rule that once a joint Will is executed, it leads to a presumption of mutuality. Therefore, this Court is of the view that the First Appellate Court erred in declining relief to the plaintiff based on the decision of this Court in **Mathew** (supra).

31. Having concluded that Ext.B5 Will is not a mutual Will, this Court must proceed to consider the nature of Ext.A2. Once again, this Court is reminded of the findings of the First Appellate Court that the very fact that



2026:KER:18297

R.S.A No.1065 of 2013

27

the 1st defendant, Devaki, executed Ext.B2 cancellation deed shows that Ext.A2 settlement deed has been given effect too. There is no cross appeal against the said findings.

32. In **Laxman Tatyaba Kankate and another v. Taramati Harishchandra Dhattrak** [(2010) 7 SCC 717], the Supreme Court held that though a party is entitled to support the decree on other grounds, he cannot challenge the findings without filing a cross appeal. This Court does not wish to burden itself on the precedents on the point as regards the nature of the acceptance of the Will.

33. On the question whether Ext.A2 settlement deed has come into effect or not, the decision of the Supreme Court in **N.P.Saseendran v. N.P.Ponnamma and others** [(2025) 7 SCC 502] covers the field. It was held that a unilateral cancellation gift is impermissible and delivery of possession is not a condition sine qua non to validate the



2026:KER:18297

R.S.A No.1065 of 2013

28

gift. Paragraph 24 is extracted hereunder.

24. Further, in both the cases, unilateral revocation is not permitted as evident from Section 126 of the Transfer of Property Act, 1882. There can be a clause permitting such revocation in the deed. Similarly, the creation of a life interest would not affect the grant and change the character of the document. Similarly, the delivery of possession is not mandatory as in both cases. In case of a gift or settlement, it is sufficient if the donee/settlee had accepted the same during the lifetime of the executor of the document and such acceptance can be either express or implied, but must be visible from the conduct of the parties. Putting the donee/settlee into possession or handing over the document to the recipient can also be recognised as valid acceptance. The registration of the gift by the donee and the possession of such document will also amount to valid acceptance.

34. In the light of the aforesaid decision of the Hon'ble Supreme Court, this Court is of the view that Ext.A2 settlement has come into effect and the rights of the plaintiff over the property by virtue of Ext.A2 cannot be denied.

35. Resultantly, the substantial questions of law framed by this Court are answered in favour of the



2026:KER:18297

R.S.A No.1065 of 2013

29

appellant as follows:-

(a) Ext.B5 Will is only a joint Will and no mutuality could be implied from the said Will. Therefore, the 1st defendant was perfectly entitled to execute a settlement deed in respect of her share.

(b) Once Ext.A2 settlement deed is executed, there cannot be any unilateral cancellation of the same, especially on the ground that it has not come into effect.

Accordingly, this appeal is allowed by reversing the judgment and decree in A.S No.240/2009 of the II Additional District Court, Ernakulam, in confirming the judgment and decree in O.S No.463/2002 on the files of II Additional Munsiff Court, Ernakulam. O.S No.463/2002 is decreed as prayed for and a preliminary decree is passed by directing the plaint schedule property to be partitioned by metes and bounds and the plaintiff is allotted 11/80



2026:KER:18297

R.S.A No.1065 of 2013

30

shares. If the other defendants also desire in getting their share allotted, they may apply for the passing of a supplementary preliminary decree before the jurisdictional court on payment of requisite court fee. The plaintiff is free to apply for passing of final decree. Cost will be borne out of estate.

Sd/-

**EASWARAN S.
JUDGE**

AMR