IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

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

RSA NO. 624 OF 2015

AGAINST THE JUDGMENT AND DECREE DATED 15.01.2015 IN AS NO.270 OF 2008 SUB COURT, CHENGANNUR ARISING OUT OF THE JUDGMENT AND DECREE DATED 19.12.2007 IN OS NO.386 OF 2002 OF MUNSIFF COURT,CHENGANNUR

APPELLANT/APPELLANT/PLAINTIFF:

N.SUBRAMANYA SARMA, AGED 60 YEARS,
OWN AFFAIRS, S/O.NARAYANA MOOSATH, EDAKKATTIL ILLOM, PULIYOOR VILLAGE, PULIYOOR MURI, CHENGANNUR TALUK, ALAPUZHA DISTRICT, PRESENTLY RESIDING AT THIRUVANNUR NADA, KOZHIKODE - 673 029.

BY ADVS.
SHRI.P.T.GIRIJAN
SHRI.C.MURALIKRISHNAN (PAYYANUR)
SRI.ABRAHAM GEORGE JACOB
SHRI.AKSHAY R
SRI.ADEENA SHAMEED

RESPONDENTS/RESPONDENTS 2 TO 4 AND 6 TO 11/DEFENDANTS 2,3,5,7,8,9,10,11& NON PARTY TO SUIT:

1 E.N.NARAYANA SARMA
AGED 47 YEARS, GOVERNMENT EMPLOYEE, S/O.NARAYANAN MOOSATH, EDAKKATTIL ILLOM, PULIYOOR VILLAGE,

PULIYOOR MURI, CHENGANNUR TALUK, ALAPUZHA DISTRICT - 689 510.

2 RAJAN
AGED 46 YEARS, S/O.ACHUTHAN, MUDIYIL HOUSE, PULIYOOR VILLAGE, PULIYOOR MURI, CHENGANNUR TALUK, ALAPUZHA DISTRICT 689 510.

3 LEELA @ SAJANI
AGED 39 YEARS, MUDIYIL HOUSE, PULIYOOR VILLAGE, PULIYOOR MURI, CHENGANNUR TALUK, ALAPUZHA DISTRICT 689 510.

4 SARADAKUTTY AMMA (DIED, LRS RECORDED)
TC 38/1877, WEST FORT, THIRUVANANTHAPURAM FROM EDAKKATTIL ILLOM, PULIYOOR MURI, PULIYOOR VILLAGE.

(RESPONDENTS 5 AND 10 ALREADY IN THE PARTY ARRAY ARE RECORDED AS THE L.HRS. OF DECEASED 4TH RESPONDENT AS PER THE ORDER DTD. 06/8/2015 IN I.A. 1907/2015)

5 SUBHADRARANI
AGED ABOUT 43 YEARS, KOCHUMADOM, T.C.17/1817(9), PURA 24C, NETHAJI ROAD, POOJAPPURA, THIRUVANANTHAPURAM-695 012.

6 E.N. PADMAJADEVI
AGED 53 YEARS, D/O.SAROJINI ANTHARJANAM, SREE VIHAR, PUTHEZHATHU ILLOM, ARANMULA VILLAGE, KOZHENCHERY TALUK, PATHANAMTHITTA DISTRICT - 689 533.

7 V.P. KANNAN
AGED 23 YEARS, S/O.LATE JALAJA DEVI, VALAKKODATHU ILLOM, UDAYANAPURAM VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT- 686 143.

8 V.P. KARTHIKA
AGED 13 YEARS, D/O.LATE JALAJA DEVI, VALAKKODATHU

ILLOM, UDAYANAPURAM VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT - 686 143.

(IT IS RECORDED THAT 8TH RESPONDENT HAS ATTAINED MAJORITY AS PER ORDER DATED 24/2/2021 IN I.A.NO. 01/2021 IN RSA 624/2015)

9 PARAMESWARAN MOOTHATHU (DIED LRS RECORDED)
AGED ABOUT 56 YEARS, S/O.SUBRAMANYAN MOOTHATHU, VALAKKODATHU ILLOM, UDAYANAPURAM VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT - 686 143.

(RESPONDENTS 7 AND 8 ARE RECORDED AS THE LEGAL REPRESENTATIVES OF DECEASED 9TH RESPONDENT AS PER ORDER DATED 24/2/2021 IN I.A.NO.02/2021 IN RSA 624/2015.)

10 KANNAN
AGED ABOUT 37 YEARS, S/O.LATE NEELAKANTA SHARMA, RESIDING AT T.C.36/1427(6), J.P.NAGAR, 21-C, OUTSIDE WEST FORT, THIRUVANANTHAPURAM - 695023.

BY ADVS.
SRI.R.LAKSHMI NARAYAN (SR.) FOR R1 & R10
SHRI.M.R.SABU
SRI.J.HARIKUMAR FOR R5
SHRI.N.K.KARNIS FOR R2 & R3
SRI.KURUVILLA JOHN
SRI.S.SHYAM FOR R2 & R3
SMT.POOJA M.NAIR FOR R2 & R3
SRI.N.SUKUMARAN (SR.) FOR R2 & R3
SRI.SAJI VARGHESE KAKKATTUMATTATHIL FOR R2 & R3
SRI.KIRAN PETER KURIAKOSE FOR R2 & R3

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 17.11.2025, ALONG WITH RSA.698/2015, THE COURT ON 19.12.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

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

RSA NO. 698 OF 2015

AGAINST THE JUDGMENT AND DECREE DATED 15.01.2015 IN AS NO.270 OF 2008 SUB COURT, CHENGANNUR ARISING OUT OF THE JUDGMENT AND DECREE DATED 19.12.2007 IN OS NO.386 OF 2002 OF MUNSIFF COURT, CHENGANNUR

APPELLANTS/RESPONDENTS 2 AND 11/DEFENDANTS 2 AND LEGAL HEIR OF D1:

1 E.N.NARAYANA SHARMA
GOVT.EMPLOYEE, S/O.NARAYANAN MOOSATH,EDAKKATTIL ILLAM, PULIYOOR MURI, PULIYOOR VILLAGE,CHENGANNUR TALUK, WORKING AS CLERK, BILLING UNIT,OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER,KERALA WATER AUTHORITY, THIRUVALLA.

2 KANNAN S/O.NEELAKANDA SARMA
SIV GANGA, TC 37/1877, PADINJARENADA, THIRUVANANTHAPURAM.

BY ADVS.
SRI.R.LAKSHMI NARAYAN (SR.)
SRI.P.RAVINDRAN (SR.)
SHRI.M.R.SABU

RESPONDENTS/APPELLANT & RESPONDENTS 3 TO 10/PLAINTIFF & DEFENDANTS 3 TO 11:

1 N.SUBRAMANYA SHARMA, AGED 60, S/O.NARAYAN MOOSATH, COMPANY EMPLOYEE,NOW RESIDING AT 102, TULIP GARDEN,CO-OPERATIVE HOUSING SOCIETY LTD., MILITARY ROAD, MAROL,ANDHERI EAST, MUMBAI-400 059 FROM EDAKKATTIL ILLAM,PULIYOOR MURI, PULIYOOR VILLAGE, CHENGANNUR TALUK.

2 RAJAN, AGED 52 YEARS, S/O.ACHUTHAN P.W.D. CONTRACTOR, RESIDING AT MUDIYIL HOUSE, PULIYOOR MURI, PULIYOOR VILLAGE, CHENGANNUR TALUK-689 510.

3 LEELA, AGED 45 YEARS, MUDIYIL HOUSE, PULIYOOR MURI, PULIYOOR VILLAGE, CHENGANNUR TALUK-689 510

4 SARADAKUTTY AMMA, (DIED, LRS RECORDED) AGED 62 YEARS, T.C.37/1877, WEST FORT, THIRUVANANTHAPURAM,FROM EDAKKATTIL ILLAM, PULIYOOR MURI, PULIYOOR VILLAGE - 689 510.

(AS PER THE ORDER DATED 10/8/2016 ON STATEMENT VIDE OF 4319/16 DATED 02/08/2016, IT IS RECORDED THAT THE 4TH RESPONDENT DIED AND THE 2ND APPELLANT AND 5TH RESPONDENT WHO ARE ALREADY IN THE PARTY ARRAY ARE HER LEGAL HEIRS)

5 SUBHADRANI, AGED 50 YEARS, T.C.37/1877, WEST FORT, THIRUVANANTHAPURAM, FROM EDAKKATTIL ILLAM, PULIYOOR MURI, PULIYOOR VILLAGE - 689 510.

6 E.N. PADMAJA DEVI, AGED 59 YEARS, S/O.SAROJINI ANTHARJANAM, SREE VIHAR, PUTHEZHATHU

ILLAM, ARANMULA VILLAGE, KOZHENCHERRY
TALUK,PATHANAMTHITTA DISTRICT - 689 533.

7 V.P. KANNAN, AGED 29 YEARS
S/O.JALAJA DEVI, VALAKKODATHU ILLATHU, UDAYANAPURAM
VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT - 686 143.

8 V.P. KARTHIKA, ATED 18 YEARS
D/O.JALAJA DEVI, VALAKKODATHU ILLATHU, UDAYANAPURAM
VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT - 686 143.

9 PARAMESWARAN MOOTHATHU, AGED 52 YEARS,
S/O.SUBRAMANIAN MOOTHATHY, VALAKKODATHU ILLATHU,
UDAYANAPURAM VILLAGE, VAIKOM TALUK, KOTTAYAM
DISTRICT-686 143.

BY ADVS.

SHRI.C.MURALIKRISHNAN (PAYYANUR)FOR R1
SMT.ADEENA SHAMNAD FOR R1
SRI.ABRAHAM GEORGE JACOB FOR R1
SHRI.AKSHAY R FOR R1
SRI.S.SHYAM FOR R2 & R3
SRI.KURUVILLA JOHN FOR R2 & R3
SRI.SAJI VARGHESE KAKKATTUMATTATHIL FOR R2 & R3
SHRI.N.K.KARNIS FOR R2 & R3
SHRI.J.HARIKUMAR FOR R5
SHRI.KIRAN PETER KURIAKOSE
SHRI.P.T.GIRIJAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 17.11.2025, ALONG WITH RSA.624/2015, THE COURT ON 19.12.2025 DELIVERED THE FOLLOWING:

"C.R"

EASWARAN S., J.

RSA Nos.624 and 698 of 2015

Dated this the 19th day of December, 2025

J U D G M E N T

Has the concept of civil death of a person, who chooses an ascetic life (*sanyasi*), lost relevance on coming into force of the Hindu Succession Act, 1956? This Court is called upon to examine the issue because the plaintiff claims that he has not adopted the life of an ascetic, whereas the defendants contend that the plaintiff consciously chose the life of an ascetic and thus is precluded from claiming the right over the family property.

1. Interestingly, the plaintiff and the defendants in O.S.No.386/2002 on the files of the Munsiff's Court, Chengannur, a suit for partition, have come up in these second appeals, respectively, questioning the manner in which the Sub Court, Chengannur rendered the judgment dated 15.01.2015 in A.S.No.270/2008, an appeal by the plaintiff. By the judgment and decree of the trial court dated 19.12.2007,

the suit filed by the plaintiff for partition was dismissed, and the plaintiff carried forward the challenge in appeal. In the first appeal, the dismissal of the suit was reversed and the suit was decreed. The plaintiff in his second appeal contends that the quantum of shares allotted to him is not correct. The defendants, on the other hand, are questioning the mode of reversal of the judgment of the trial court, in RSA No.698/2015.

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

In the wedlock of Narayan Moosath of Edakattil Illom with Subhadra, the 1st defendant was born. Subhadra died and Narayan Moosath remarried making the 4th defendant his 2nd wife. The plaintiff, 2nd defendant, one Padmaja and one Jalaja were born in that wedlock. By partition deed No.4206 of 1954, the plaint schedule properties and other properties were set apart as Saka share of Narayan Moosath, plaintiff, 4th defendant, the child in her womb and the children to be born later. The 2nd defendant and other two daughters were born later. During 1958, a partition was effected as deed No.4155 among the family members, dividing them into three and allotted shares. Narayan

Moosath and minor child, Savithri, who died during her minority, were the first party and A schedule was allotted to them. Certain properties were allotted to Narayan Moosath as his individual share. The plaintiff, deceased Savithri, the 4th defendant and the child in the womb and other children to be born later were made as second party and B schedule was allotted to them. The 1st defendant, who was a major at the time, was made a third party and due share was allotted to him also. The plaint A schedule item No.2 property belonged to Narayan Moosath, is in possession of the 1st defendant on behalf of the Illam. Narayan Moosath expired in the year 1964. Sisters of the plaintiff were married using the funds spent by the plaintiff, 4th defendant and others and, hence, they relinquished their rights over their shares. Defendants 1 and 2, along with the 4th defendant and the sisters of the plaintiff, created partition deed No.1191 in the year 1994 without the knowledge of the plaintiff and not allotting due share to him. Though the plaintiff demanded partition, the defendants were not amenable. Hence, the suit.

2.2 Defendants 1, 2 and 4 resisted the suit. It was contended that the plaintiff left his native land at a young age and had become an ascetic

by adopting *Sanyasa*. Neither the 4th defendant nor her children were parties in the partition deed of the year 1954. Narayan Moosath had no right to sell the property allotted to the minor 1st defendant. As per the partition deed of the year 1958, existing minors and the children to be born to the 4th defendant were allotted B schedule and were treated as one party. The quantum of share claimed by the plaintiff was also disputed.

2.3 The 3rd defendant filed a separate written statement contending that by virtue of sale deed No.2028/1994, the 3rd defendant and his wife are in ownership of the property. The plaintiff or anyone under him has no right over the same and he is a *bona fide* purchaser.

2.4 On behalf of the plaintiff, Exts.A1 to A20 series were marked and PW1 to PW3 - the plaintiff, an independent witness and the advocate commissioner, respectively - were examined. The reports and mahazar of the advocate commissioner were marked as Exts.C1 to C3. On behalf of the defendants, Exts.B1 to B14 were marked and DW1 and DW2 - the 2nd defendant and an independent witness, respectively - were examined.

3. The trial court framed the following issues for consideration:

"1. Whether plaintiff is entitled to any share of the plaint schedule properties?
2. What is the share?
3. Quantum of mesne profits, if plaintiff is entitled for the same?
4. Reliefs and costs?"

4. On appreciation of the oral and documentary evidence, the trial court came to the conclusion that the claim of the plaintiff for partition is barred by the principle of estoppel. In the light of the oral testimony of DW2 and also the various communications – letters addressed by the plaintiff to the defendants - the trial court concluded that the plaintiff had renounced worldly life and adopted *Sanyasa* and thereby relinquished all claims over the property and thus was disentitled to claim partition. Accordingly, the suit was dismissed.

5. Aggrieved, the plaintiff preferred A.S.No.270/2008 before the Sub Court, Chengannur. The appeal was allowed by judgment dated 15.1.2015 and the judgment and decree of the trial court dismissing the suit, were reversed and a preliminary decree for partition was passed. Hence, both the appeals.

6. On 8.10.2015, this Court admitted the appeals and issued notice on the substantial questions of law framed in the memorandum of appeals, since both the appeals raise substantially the same questions. But insofar as RSA No.624/2015 is concerned, the quantum of share allotted in favour of the plaintiff is disputed, and the substantial questions of law as framed in RSA No.624/2015 will be required to be addressed only if this Court finds that RSA No.698/2015 is to be dismissed. In other words, once RSA No.698/2015 is allowed, the dismissal of RSA No.624/2015 must follow.

7. The substantial questions of law, which are framed and required to be addressed by this Court in RSA No.698/2015, are as follows:

1. In view of the mandate of section 58 of Evidence Act, whether the First Appellate court is justified in burdening the defendant with the burden of proof of the acceptance of Sanyasa by the plaintiff, when it is an admitted case as amply and unambiguously revealed by Ext,.B4 to B8 letters that he has accepted Sanyasa and became a Sanyasi, thereby renouncing worldly affairs?
2. Whether the First Appellate court is right in reversing the well

considered judgment and decree of the trial court on the premises that burden to prove that the plaintiff has embraced Sanyasa is on the defendant, in spite of Exts. B4 to B8 which, along with the other facts and circumstances brought out in evidence militates against such a view taken by the First Appellate court ?

3. Whether the First Appellate court is justified in reversing judgment and decree of the trial court, when it is an undisputed case of effecting partition by excluding the plaintiff, acting on his own representation, as evident from Ext.B3 to B6 and Ext.A3 ?
4. Whether the First Appellate court is justified in ignoring the principles of estoppels as embodied in section 115 of Evidence Act, when pleadings and evidence on record would disclose in abundance that, on the basis of declaration, acts or omission intentionally caused by the plaintiff, he permitted the defendants to believe his embracing of Sanyasa to be true and act up on such belief and caused the execution of Exhibit A3 partition deed ?
5. Has not the lower appellate court erred in reversing the findings of the trial court when the pleadings and evidence on record disclose that the plaintiff had renounced the world and joined the religious order and had become an ascetic of a mutt and therefore is disentitled to demand a share of the joint

property ?

6. In the present case in spite of clear and specific admission made by the plaintiff as to fact of becoming a Sanyasi which stood corroborated by the oral evidence of Dw2, whether the lower appellate court is wrong in allowing the suit holding that the defendants failed to prove that the plaintiff renounced the world and embraced Sanyasa ?"

8. Heard Sri.R.Lakshmi Narayan, the learned Senior Counsel appearing for the appellants in RSA No.698 of 2015/2nd defendant and the legal heir of 1st defendant, and Sri.C.Muralikrishnan (Payyannur), the learned counsel appearing for the 1st respondent/plaintiff - the appellant in RSA No.624/2015- and Sri.S.Shyam and Smt.Pooja M. Nair, the learned counsel appearing for respondent Nos.2 and 3 in both the appeals.

9. Sri.R.Lakshmi Narayan, the learned Senior Counsel appearing for the appellants in RSA No.698/2015 raised the following submissions:

a) In view of the mandate of Section 58 of the Indian Evidence Act, 1872, admitted facts need not be proved. So the plaintiff's admission as discernable need not be proved by the defendants

and it is for the plaintiff to adduce sufficient evidence, if he wants to withdraw such admissions, on cogent materials, indicating that the admission was done on account of a mistake or misunderstanding. No such evidence has been adduced to prove that the admission of the plaintiff has been withdrawn in the factual circumstances of the case.

b) The first appellate court erred in finding that the burden to prove that the plaintiff has embraced *Sanyasa* is on the defendants, in spite of Exts.B3 to B10, which along with other facts and circumstances brought out in evidence.

c) The first appellate court was not justified in ignoring the principle of estoppel, as embodied in Section 115 of the Indian Evidence Act, 1872 when pleadings and evidence on record would disclose in abundance that, on the basis of the declarations, acts and omissions intentionally done by the plaintiff, he permitted the defendants to believe that he had embraced *sanyasa* to be true, and induced them to act upon such belief, to their detriment by executing Ext.A3 partition

deed and developing the plaint schedule property by making constructions and even selling portions thereof to strangers.

d) The first appellate court erred in finding that even if the plaintiff declares that he has embraced *sanyasa* disentitling him to claim any share in the joint property because of his renunciation of the worldly affairs and severance of connection with the natural family, there was no pleadings to that effect in the written statement, when the written statement in its original form and in the amended form, specifically plead ingredients of Section 115 of the Indian Evidence Act, 1872.

e) The first appellate court misread the evidence of the case and the exhibits, which definitely show that it is not disputed that PW1 did not enter into *sanyasa* and it is also true that one who enters *sanyasa* cannot terminate the *sanyasa* at his whims and fancies and re-enter into the pre *sanyasa* period.

f) The first appellate court ought to have found that setting apart a share for the plaintiff in Ext.A3 partition deed will not come

in the way of the defendants, to claim that the plaintiff has renounced the world by embracing the *sanyasa* and the setting apart of a large share is done as per the legal advice obtained and not because the defendants were not carried away and acted upon the declaration of the plaintiff that he has embraced *sanyasa*. This can be at the best, treated as an allotment/gift in favour of the plaintiff who is a *sanyasi*, to be inherited by his religious order on his demise. So even if the declaration by the plaintiff that he accepted *sanyasa* is an erroneous one to mislead the defendants or rest of the world or with any other ulterior motives, with such declaration the plaintiff is estopped from contending otherwise in view of Section 115 of the Indian Evidence Act, 1872 coupled with Section 58 of the Indian Evidence Act, 1872, especially when Ext.A3 partition deed is executed by the defendants acting upon such declarations made by the plaintiff.

g) Following precedents are cited on behalf of the appellants:

i) **S.Shanmugam Pillai And Others** v. **K.Shanmugam Pillai And Others [(1973) 2 SCC 312]**,

ii) **Kale and Others** v. **Deputy Director of Consolidation And Others [(1976) 3 SCC 119],**

iii) **Sital Das** v. **Sant Ram and others [AIR 1954 SC 606],**

iv) **Anil Rishi v. Gurbaksh Singh [(2006) 5 SCC 558],**

v) **B.L.Sreedhar and others v. K.M.Munireddy (dead) and others [(2003) 2 SCC 355]** and

vi) **Shri Krishna Singh v. Mathura Ahir and Ors. [(1981) 3 SCC 689]**

10. *Per contra*, Sri. C. Muralikrishnan (Payyannur), the learned counsel appearing for the 1st respondent in RSA No.698 of 2015/ plaintiff - the appellant in RSA No.624/2015- countered the submissions of the learned Senior Counsel for the appellants in RSA No.698/2015, as follows:

a) When the defendants set up a claim that the plaintiff has become a *Sanyasi*, there cannot be any presumption

regarding civil death, unless the entire ceremonies, including the completion of Viraja Homa, are proved beyond doubt. The various changes of becoming a *Sanyasi* are clearly spelt out in the Hindu custom, and, therefore, it is the burden of the defendants, who allege that the plaintiff has become a *Sanyasi*, to prove the same.

b) The evidence adduced in the present case falls short of the requirement of law as expounded by the Hon'ble Supreme Court in **Shri Krishna Singh v. Mathura Ahir and Ors [(1981) 3 SCC 689]**.

c) The plea of the defendants that the plaintiff is estopped from claiming his right over the plaint schedule property does not hold good because, by mere words or conduct, a presumption regarding the estoppel cannot be found out.

d) In order to constitute a valid relinquishment of the rights of the plaintiff over the property, it must be proved that the plaintiff had executed a relinquishment deed, without which,

an inference cannot be drawn from the attendant facts and circumstances.

e) The concept of civil death, on a person becoming *Sanyasi*, though recognised under the ancient Hindu custom, no longer applies in a case where the property rights are governed by the law of succession under the provisions of the Hindu Succession Act, 1956. Referring to Section 4 of the Hindu Succession Act, 1956 the learned counsel appearing for the plaintiff asserted that on coming into force of the Hindu Succession Act, 1956, any law governed by custom will have to necessarily give way to the provisions of the Act. He would further point out that the decisions rendered by the Supreme Court in **Sital Das** v. **Sant Ram and others [AIR 1954 SC 606]** and **Shri Krishna Singh v. Mathura Ahir and Ors. [(1981) 3 SCC 689]** no longer hold the field because of the coming into force of the provisions of the Hindu Succession Act, 1956.

f) The right to hold a property being a constitutional right

guaranteed under Article 300A of the Constitution of India, the said right cannot be taken away merely because the plaintiff decided to adopt the life of a *Sanyasi* or choose to accept a religion of his choice. The freedom to profess any religion being the constitutional right guaranteed under Article 25 would under no way affect the right of the plaintiff to hold the property under Article 300A of the Constitution of India.

g) On allotment of share, it is pointed out that the mother and the sisters of the plaintiff had already relinquished their rights, and therefore, including their rights, the property opened up for partition.

h) The learned counsel concluded by saying that the trial court had completely misunderstood the scope and the purport of Section 115 of the Indian Evidence Act, 1872 and that it is settled that if the truth of the matter is known to both of the parties, there cannot be any estoppel by word or conduct. Referring to the various exhibits and the communications

addressed to the defendants by the plaintiff, the learned counsel would contend that at no point of time, the defendants had accepted the fact that the plaintiff had completed the ceremonies and become a *Sanyasi*. Therefore, there is no point in putting forward a case that the plaintiff is estopped from claiming the right over the plaint schedule property. In support of his contentions, relied on the following decisions:

(i) **Asa Beevi and others** v. **SKM Karuppan Chetty [1917 (41) Indian Cases 361 : 1917 SCC OnLine Mad 356]** - Madras High Court,

(ii) **Rai Sunil Kumar Mitra and others** v. **Thakur Singh and others [AIR 1984 Patna 80]**,

(iii) **Godaru Guptan Nambooripad** v. **Ittian Kochupilla [AIR 1953 TRA-CO. 447 (Vol.40, C.No.177]**,

(iv) **Shaikh Abdul Rahim** v. **Mst.Barira and others [AIR 1921 Patna 166 (2)]**,

(v) **Sheo Tahal Ram** v. **Binaek Shukul [AIR 1931 Allahabad 689]**

(vi)**Chandi Charan Nath** v. **Srimati Somla Bibi [1918 (XLIV)**

Indian Cases 254],

(vii) **K.Kochunni alias Muppil Nayar** v. **K.Kuttanunni @ Elaya Nayar and others [AIR (35) 1948 Privy Council 47]**,

(viii) **R.S.Maddanappa (Deceased) After him by his legal Representatives** v. **Chandramma & Anr [AIR 1965 SC 1812 : 1965 SCC OnLine SC 16]**,

(ix) **Allahabad Dist. Co-op. Ltd.** v. **Hanuman Dutt Tewari [AIR 1982 SC 120 : (1981) 4 SCC 431]]**,

(x) **MSGR Xavier Chullickal and others** v. **CG Raphael and Ors. [2017 (3) KHC 193] (DB)** and

(xi) **Sundari and others** v. **Laxmi and others [(1980) 1 SCC 19]**.

11. I have considered the rival submissions raised across the bar and perused the judgments rendered by the courts below and also the records of the case.

Whether the concept of civil death no longer holds the field on coming into force of the Hindu Succession Act, 1956.

12. It is indisputable that when a person adopts "*sanyasa*" he relinquishes the worldly affairs and enters a particular religious order.

Mayne's Hindu Law, eleventh edition, page 675, paragraph 561, sets out the special rules of succession to the property of an ascetic. It is pointed out therein that according to *Yajnavalkya*, the heirs who take the wealth of an ascetic are in their order, the preceptor, the virtuous pupil and one who is a supposed brother and belonging to the same order and that, according to Mitakshara, a spiritual brother belonging to the same hermitage takes the goods of a hermit and a virtuous pupil takes the property of an ascetic and that on the failure of the above, anyone belonging to the same order or hermitage takes the property, even though sons and other natural heirs of the ascetic exist. At page 721, the author has set out the legal effect of one entering into a religious order that:

> "**606.** ***One who enters into a religious order severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Neither he nor his natural relatives can succeed to each other's properties. The persons who are excluded on this ground come under three heads, viz., the Vanaprastha, or hermit; the Sanyasi or Yati or ascetic; and the***

> ***Brahmachari, or perpetual religious student. In order to bring a person under these heads, it is necessary to show an absolute abandonment by him of all secular property, and a complete and final withdrawal from earthly affairs. The mere fact that a person calls himself a Byragi, or religious mendicant, or indeed that he is such, does not of itself disentitle him to succeed to property. Nor does any Sudra come under this disqualification, unless by usage. This civil death does not prevent the person who enters into an order from acquiring and holding private property which will devolve, not of course upon his natural relations, but according to special rules of inheritance. But it would be otherwise if there is no civil death in the eye of the law, but only the holding by a man of certain religious opinions or professions."*** *

In Mulla's Hindu Law, 15th edition, page 183, the position of a person who enters into a religious order with reference to his natural family is set out thus:

> "***Where a person enters into a religious order renouncing all worldly affairs, his action is tantamount to civil death, and it excludes him altogether from inheritance and from a share on partition.***
>
> ***All property which belongs to such a person at the time of renunciation passes immediately on his renunciation to his heirs, but property acquired by him subsequent to the renunciation passes to his spiritual heirs. A person does not become a sanyasi by merely declaring himself sanyasi or by wearing clothes ordinarily worn by a sanyasi. He must perform the ceremonies necessary for entering the class of sanyasis : without such ceremonies, he cannot become dead to the world."***

12.1 In ***Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran [(1887) ILR 10 Mad. 375],*** *a* Division Bench of the then Madras High Court referred to the notion of a spiritual family as embodied in the Mitakshara law and to the special rule of succession applicable to the individual property of an ascetic. While

tracing the history of the mutts in Tamil Nadu, the learned Judges have observed as follows (p. 385).

> ***" If an ascetic or a hermit is a Brahmin, he is called a Yati or Sanniyasi; if a Sudra, he is called a Paradesi, and if the Sudra is attached to an Adhinam, he is called a Tambiran, and if he is at the head of the Adhinam, he is called the Pandara Sannadhi. In its original sense, the term Mutt signified the residence of an ascetic or sanniyasi or a paradesi. Though normally in ancient days a sanyasi or paradesi had no fixed residence and moved from village to village, accepting such lodgings and food as were provided for him by pious laymen who were in their turn enjoined by the Shastras to honor and support him, things changed when Sankarachariyar, the founder of the Advaita or non-dualistic school of philosophy established some Mutts in order to maintain and strengthen the doctrine and the system of religious philosophy he taught and sanyasis were placed at the head of those institutions. After Sankarachariyar, the founders of Vaishnava, Madhva and other schools of religious philosophy***

> ***in this Presidency established mutts for a similar purpose. Thus a class of endowed mutts came into existence in the nature of monastic institutions, presided over by ascetics or sanniyasis who had renounced the world. Thus the ascetic who originally owned little or no property came to own the matam under his charge and its endowment, in trust for the maintenance of the mutt and for the purpose of religious and other charities in connection therewith."***

13. In ***Avasarala Kondal Row & Anr v. Iswara Sanyasi Swamulavaru alias Avasarala Kamarozu & Ors [1911 (33) MLJ 63]***, a Division Bench of the Madras High Court set out the essentials of *sanyasa* and its incidents according to the Hindu law. The court observed that a *sanyasi* after learning the duties of a *sanyasi* should first perform his death ceremonies- this, however, is by some not considered necessary - and the eight sradhas, the last of which is his own sradha. He has to then perform Prajapathyesthi or Agneshti and the, Viraja Homam which are sacrifices in fire and are purificatory ceremonies and finally relinquish all property and abandon all worldly

concerns, down to even a desire for them and that relinquishment need not be in favour of any particular person but it may be a simple abandonment of his property and that the mere adoption of the external symbols of *sanyasam* as wearing of coloured cloth or the shaving of the head, is not enough.

14. In ***Samasundaram Chettiar v. Vaithilinga Mudaliar [1917 (40) ILR(Mad) 846],*** another Division Bench of the Madras High Court has laid down that, according to the Hindu law texts, the rules as to dis-inheritance applicable to a *sanyasi* do not apply to *Sudra* ascetics or *Tambirans* unless a usage to this effect is established and in support of the said view, the Bench has referred to two earlier decisions in **Dharmapuram Pandara Sannadhi** v. **Virapandiyam Pillai [1899 (22) ILR (Mad) 302]** and **Harish Chandra Roy** v. **Atir Mahmud [1913 (40) ILR(Cal) 545]**, wherein it has been held that a *Sudra* cannot enter the order of *sanyasis* and as such a *Sudra* ascetic was not excluded from inheritance to his family estate unless some usage is proved to the contrary.

15. The above being the position of law as per the *Mitakshara* Law, the further question is, Has the concept of civil death on becoming a *Sanyasi* or ascetic ceased to have effect on coming into force of the Hindu Succession Act, 1956. In order to test the above argument, one needs to look into the Preamble of the Hindu Succession Act, 1956 to find out the purpose of the enactment. The preamble reads as follows: *" The Act to codify the law relating to intestate succession among Hindus*." Section 4 gives an overriding effect to the provisions of the Act. The thrust of the argument of the learned Counsel for the 1st respondent/plaintiff is that by virtue of the operation of the provision, the concept of civil death has lost its relevance.

16. The above contention needs to be deliberated seriously because, it has a far-reaching consequences since even in modern times, the practice of adopting the *sanyasa* life continues to hold good.

17. Section 4 of the Hindu Succession Act, 1956 reads as under:

> "**4. Over-riding effect of Act.**—(1) Save as otherwise expressly provided in this Act,—
>
> (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force

immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

18. A cursory glance at the aforesaid provision would make it clear that any text or rule or interpretation of Hindu law or any custom or usage of that law in force immediately before the commencement of the Act shall cease to have effect as soon as coming into force of the Hindu Succession Act, 1956. Therefore, it is contended that irrespective of a person becoming a *Sanyasi* on or after the commencement of the Hindu Succession Act, 1956, he/she does not cease to have any right over the property because of the overriding provision under Section 4 of the Act. At the first blush, it may appear that the contention raised on behalf of the 1st respondent-plaintiff deserves serious consideration.

19. In **Sundari and others** v. **Laxmi and others [(1980) 1 SCC 19]**, the scope of Section 4 of the Hindu Succession Act, 1956 was

considered by the Supreme Court. Paragraph 9 of the said decision reads as under:

> "9. Before dealing with the contentions it is necessary to briefly refer to the salient features of Aliyasanthana law. In the well-known treatise on Malabar and Aliyasanthana law by P.R. Sundara Aiyar, a distinguished Judge of the Madras High Court, and edited by B. Sitarama Rao, an eminent lawyer of the Madras High Court who hailed from South Kanara, the Aliyasanthana law is stated to imply a rule of inheritance under which property descends in the line of nephews. The term "Aliyasanthana law" is the exact Canarese equivalent of the Malayalam term Marumakkathayam. Aliyasanthana law differs but slightly from the Marumakkathayam system. In its main features viz. impartibility, descent in the line of females and non-recognition of marriage as a legal institution it completely agrees with the Marumakkathayam law. In Aliyasanthana law the males are equal proprietors with females and joint management is recognised, while the Marumakkathayam law does not recognise a right to joint management. The succession to the separate property of an individual member in Aliyasanthana law is to the nearest heirs and not to the Tarwad as in the Marumakkathayam law. The succession of

the heirs of the separate property is recognised by the Madras Aliyasanthana Act, 1949, Sections 18 to 24. On the facts of the present case it is not disputed that Defendants 22, 23 and 24 have enjoyed the interest as nissanthathi kavaru and on partition are entitled only to life-interest in the properties allotted to them under Section 36(3) of the Madras Aliyasanthana Act. The question that arises for consideration is how far the Aliyasanthana Act regarding partition and succession has been affected by the Hindu Succession Act. The Hindu Succession Act came into force on June 17, 1956. The preamble states that the Act amends and modifies the law relating to intestate succession among Hindus. Though the preamble refers only to "Intestate succession" as the title "Hindu Act" indicates it relates to the law of succession among Hindus and not merely to intestate succession as mentioned in the preamble. The law has brought about radical changes in the law of succession. The law is applicable to all Hindus as provided in Section 2 of the Act. It is made clear that the law is applicable not only to persons governed by Dayabhaga and Mitakshara law but also to persons governed by Aliyasanthana, Marumakkattayam and Nambudri systems of Hindu law. Section 4 of the Act gives overriding application to the provisions of the Act and lays down that in respect of any of

> the matters dealt with in the Act all existing laws whether in the shape of enactment or otherwise which are inconsistent with the Act are repealed. Any other law in force immediately before the commencement of this Act ceases to apply to Hindus insofar as it is inconsistent with any of the provisions contained in the Act. It is therefore clear that the provisions of Aliyasanthana law whether customary or statutory will cease to apply, insofar as they are inconsistent with the provisions of the Hindu Succession Act."

20. It is beyond doubt that the Hindu Succession Act, 1956 is intended to codify the law relating to succession among Hindus. Can it be said that Section 4 also governs the law relating to custom followed among the Hindus? It is difficult for this Court to envisage a situation and hold that Section 4 is primarily intended to give an overriding effect on the law relating to succession, over other religious custom followed in Hindu Religion.

21. In **His Holiness Sri La-Sri Shanmugha Desika Gnanasambanda Paramacharya Swamigal, Dharmapuram** Vs **Controller of Estate Duty [1985 153 ITR 390]** a Division Bench of the Madras High Court considered the scope of Section 4 of the Hindu

Adoptions and Maintenance Act, 1956 in order to decide whether a Hindu after becoming a *sanyasi* is bound to maintain his mother, going by the provisions of Section 4 of the Act. It was held as follows:

> **.....** "*But the question is whether that well-established principle will apply to a Hindu who has become an ascetic by undergoing a civil death. Once the law assumes a civil death on one becoming a sanyasi, he ceases to have any right or obligation with reference to the members of the natural family. The learned counsel for the accountable person, then contends that once a person becomes a sanyasi, he relinquishes his rights of inheritance but he cannot unilaterally relieve himself of any obligations which he is bound to perform either under his personal law or under a contract. The learned counsel refers to s. 4 of the Hindu Adoptions and Maintenance Act and contends that it has got an overriding effect and, therefore, the son's obligation to maintain the mother continues even after the deceased became a sanyasi. It is not possible for us to accept the said contention. The rule of Hindu law that when a Hindu enters into a religious order, his connection with the members of his natural family stands severed, cannot be said to have been abrogated by the provisions of the Hindu Adoptions and Maintenance Act, 1956. This is because that rule is not one which is inconsistent with any of the provisions of the Hindu Adoptions and Maintenance Act, nor is there any provision in the said Act touching on the above question. Therefore, the overall effect of s. 4 of the Hindu Adoptions and Maintenance Act does not come into play. Further, the provisions of the said Act cannot be*

> *applied to persons who are civilly dead. It is no doubt true, becoming a sanyasi is renunciation of one's worldly life and possessions, and neither the ancient texts nor the judicial precedents refer to the concept of obligations. However, having regard to the fact that on becoming a sanyasi, the person suffers a civil death, it has to be taken that after attaining sanyasa, he must be taken to have a re-birth and as such all his earlier rights and obligations should be taken to have come to an end. In this view of the matter, we are inclined to agree with the view taken by the Tribunal that the settlement deed was not supported by consideration in money or moneys worth and, therefore, it should be taken as a gift.*

22. In **Shri Krishna Singh v. Mathura Ahir and Ors. [(1981) 3 SCC 689]**, the Supreme Court categorically held that one who enters into a religious order severs his connection with the members of his natural family and he is accordingly excluded from inheritance. It was also held that entering a religious order is tantamount to civil death so as to cause a complete severance of his connection with his relations, as well as with his property (See paras 29, 30, 33, 47, 67, 68, 69 and 70). This decision also says that if ceremonies for the acceptance of *sanyasa* is conducted and it is on record in the evidence, it will give rise to an

irresistible conclusion that other ceremonies connected thereto would have been completed.

23. Thus, it is beyond doubt that once a person adopts the ascetic life, a civil death is inevitable. So long as the Hindu Succession Act, 1956 does not prohibit the customary law governing the Hindus, it cannot be said that the Act intended to govern the field is not covered under it. Still further, Section 4 of the Hindu Adoptions and Maintenance Act, 1956 is in *pari materia* with the provisions of Section 4 of the Hindu Succession Act, 1956. Therefore, once it is concluded that the Hindu Succession Act, 1956 is intended to largely govern the law of succession, it is imperative for this Court to hold that Section 4 of the Hindu Succession Act, 1956 does not override the customary law governing the Hindu Religion unless it conflicts with the Act. It must also be remembered that the Hindu Succession Act, 1956 does not prohibit a person from becoming a *Sanyasi*, which is by and large a personal decision of an individual. At any rate, so long as the right to choose a particular religion or a caste or a custom forms the basic secular feature of our Constitution, it is beyond the scope of the legislative powers to prohibit a person from

adopting a particular nature of religion or a custom. When we read the basic principles governing the operation of Article 25 of the Constitution, one cannot but notice the fact that irrespective of the nature of the religion, the right to choose a particular religion is always protected in our Constitution. Therefore, it would be far-fetched for the courts to hold that as soon as the Hindu Succession Act, 1956 is enacted, the customary law governing the ancient Hindu tradition is given a go-bye by the Parliament. Hence, the argument based on the overriding effect of the Hindu Succession Act, 1956 is only to be rejected. Pertinently, the Hindu Succession Act, 1956 does not deal with any customary usage under the Hindu law, but only deals with the manner of inheritance in respect of the property of a Hindu male or a female. The custom, which is followed if one chooses to become a *Sanyasi*, is not touched or governed by the provisions of the Hindu Succession Act, 1956 and therefore, the consequences following out of a person adopting an ascetic life, remain untouched by the overriding provisions under Section 4 of the Hindu Succession Act, 1956.

24. Before this Court concludes on this issue, this Court should also take note of the decision of the Division Bench of this Court in **MSGR Xavier Chullickal and others** v. **C.G. Raphael and Ors. [2017 (3) KHC 193] (DB)** relied on by the learned Counsel for the 1st respondent/plaintiff. It is pointed out that the Division Bench of this Court had held that the decision of the Supreme Court in **Sital Das** v. **Sant Ram and others [AIR 1954 SC 606]** no longer applies after coming into force of the Hindu Succession Act, 1956. It is pertinent to mention that the Division Bench was not called upon to decide the applicability of the Hindu Succession Act, 1956 qua a person becoming a *Sanyasi* and the consequences of a civil death. Therefore, this Court is inclined to think that the observations made by the Division Bench can only be construed as *obiter dicta* and have no precedential value. At any rate, the scope and effect of Section 4 of the Hindu Succession Act, 1956 having not been dealt with in detail, the decision of the Division Bench can only be construed as *per incurium*, because that was not an issue which the Division Bench was called upon to decide.

25. Further conclusion reached by this Court that the decision in **MSGR Xavier Chullickal and others (supra)** must be construed as *per incurium* is fortified by the fact that the decision does not take note of the decision of the Supreme Court in **Shri Krishna Singh** v. **Mathura Ahir and Ors. [(1981) 3 SCC 689 : AIR 1980 SC 707]**. Therefore, the contention raised by referring to the provisions of the Hindu Succession Act, 1956 must necessarily fail.

Whether, on adopting an ascetic life, a right to hold property exists under Article 300A of the Constitution of India?

26. This issue, though not raised before the courts below, is raised before this Court in the context of the right to hold property. Article 300A of the Constitution of India provides that no person shall be deprived of his right to hold property except in accordance with the law. The legal impact of a person becoming a *Sanyasi* relates to the devolution of his ancestral property after his civil death, and if the process is completed, a complete and orthodox renunciation of all worldly ties as per the customary law take place. It will be difficult to envisage a situation, where on becoming an ascetic or a *Sanyasi*, his constitutional

rights guaranteed under our Constitution will stand to lose. But then, the right to hold the property under Article 300A of the Constitution of India must be judged in the context of the nature of the right sought to be asserted by a person, who is stated to have chosen an ascetic life by becoming a *Sanyasi*. Right to profess a religion or a particular custom is guaranteed under Article 25 of the Constitution of India.

27. What is sought to be projected is, even if a person chooses an ascetic life, his right guaranteed under our Constitution is not lost. Though there may be force in the above argument, the question remains to be considered is whether such right is available against a private individual and that too on an ancestral property. A reading of Article 300A shows that, no person shall be deprived of his property save by authority of law. The Supreme Court in ***Jilubhai Nanbhai Khachar and others Vs State of Gujarat and another [1995 Supp (1) SCC 596]*** held that the word " property" under Article 300A must be understood in the context of sovereign power of eminent domain exercised by the State and the property expropriated. Para 48 of the decision is extracted as under:

"48. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of

public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A."

28. The issue could be approached from another angle. In the present case, admittedly, the right acquired by the plaintiff is the right over the ancestral property, and a partition deed was executed in the year

1954. The property remained as such without a further partition between the Saka of the plaintiff to which the property was allotted. Inasmuch as the devolution of the rights over the property is neither governed by Article 300A nor under the provisions of the Hindu Succession Act, 1956 and since the deprivation has not happened at the hands of the State, any other mode of deprivation of the individual rights can be remedied only through civil proceedings, in which case, Article 300A of the Constitution cannot have any application.

29. One school of thought which would prompt this Court to hold that to apply Article 300A, the deprivation must happen at the hands of the State when it chooses to exercise its powers under the doctrine of eminent domain. At any rate, even if this Court were to conclude that the right to hold property being a constitutional right, would still be available to a person choosing to lead an ascetic life, it is beyond cavil that the said right could be waived by him by express or implied conduct. Therefore, notwithstanding the applicability of Article 300 A, the plaintiff could only succeed if this Court were to hold that in the light of the evidence adduced by the parties, an express intention to relinquish the proprietary

rights held by him under the deed of partition of the year 1954 has been made out.

30. This assumes significance because by unimpeachable evidence, it has come out that the plaintiff himself has expressly disowned his right over the property and that prompted the defendants to deal with the property as their own. But then, the plaintiff appears to have resiled from his act and raised a contention that despite his express conduct in deciding to relinquish the right over the property, such relinquishment is of no consequence because of the absence of any registered document. This aspect will be dealt with by this Court later in this judgment. Therefore, to conclude, though the rights of a person adopting an ascetic life could still be governed by Article 300A of the Constitution of India in so far it related to a property acquired by him after becoming an ascetic and not to the ancestral property, if the deprivation of his property, whether ancestral or obtained after becoming a *sanyasi,* is done by a private individual, the Article can have no application at all. To hold otherwise would certainly erode the

customary law, which prevails between the parties, which is not intended to be infringed in any manner by the provisions of our Constitution.

Estoppel by conduct

31. Both parties are at serious variance as regards the manner in which the said issue is required to be addressed. The plaintiff had, on one hand, contended that despite issuing letters specifically indicating that he does not want any right over the property, he still holds right over the ancestral property because the defendants failed to prove that he had become a *Sanyasi*.

32. The defendants, on the other hand, contended that there are enough materials before this Court to conclude that the plaintiff had given up his right over the property, which led to the defendants partitioning the property among themselves and subsequently, selling the same to the 3rd defendant, and after eight years of execution of a registered deed, the suit for partition is instituted.

33. While dealing with this issue, this Court will have to incidentally address the question as on whom the burden lies to prove that a person had adopted an ascetic life or become a *Sanyasi*.

34. Certainly, the plaintiff was inclined to give up the worldly life and to adopt the path of spirituality. The evidence adduced by the defendants unequivocally shows that the plaintiff had gone to an *Ashramam* in North India and had started living there and had completed the procedures to become a *Sanyasi*. But then, the issue is whether it has been satisfactorily proved beyond doubt that the ceremonies required to complete the formalities of one becoming a *Sanyasi* have been done in the present case or not. The evidence in the form of DW2 would clearly dispel any doubt in the mind of the court as regards the plea of the plaintiff that there were no ceremonies conducted for transforming the life of the plaintiff to a *Sanyasi*. The photographs produced before the courts below also indicate the same. Ext.B9, the gazette notification issued at the instance of the plaintiff, also shows the change of name of the plaintiff. These unimpeachable evidence remained unexplained at the instance of the plaintiff. The only contention raised on behalf of the plaintiff is placing reliance on the decision of the Supreme Court in **Shri Krishna Singh** (*supra*) to fortify his plea that a person to complete his transformation as a *Sanyasi*, one

requires to perform the *atma shraddha*. Added to the above, it is also pleaded that there is no evidence to show that the plaintiff had performed the *viraja homam* ceremony.

35. No doubt, the Supreme Court, while dealing with the customary rituals to be followed for one to complete the transformation to a *Sanyasi*, had expressly stated that the two elements required to be performed for the completion of the ceremonies are *atma shraddha* and *viraja homam*. But then, one must remember that the plaintiff did not have a case that he did not adopt the life of a *Sanyasi* or did never show any inclination towards becoming a *Sanyasi*. The materials produced before the Court would show that from leaving his *tharavad* house and reaching an *ashramam* at North India, the plaintiff was in constant touch with the family and had given enough indications to them that he was renouncing worldly life. The certificate issued by the *ashramam* also shows that he was inducted as a *Sanyasi*.

36. On contrary, the assertion of the plaintiff that, he had left the *ashramam* because he could not ultimately reach the stage of *atma shraddha* and perform the *Biraja homam*, thereby he renounced his life

as a *Sanyasi*, and came back to the worldly life and had even married and is living a family life, remained not proved with cogent evidence. Under what circumstances the plaintiff renounced the life of a *Sanyasi* and came back and became a "*gruhastha*" remained largely under a cloud. Therefore, when the plaintiff asserts before the Court that he had renounced his life as a *Sanyasi* and that the defendants had enough materials produced before the court to indicate that the plaintiff had chosen an ascetic life, necessarily this Court is inclined to think that it is the burden of the plaintiff to prove that the last two ceremonies were not conducted for the purpose of completing the process of becoming a *Sanyasi*.

37. Even if it is assumed that in the present case, the materials on record do not suggest the completion of ceremonies, it is beyond doubt that by his own conduct, the plaintiff is estopped from claiming right over the plaint schedule property based on the deed of partition in the year 1954. This is more so when the conduct of the parties would strongly indicate that, based on his request contained in various letters written by him, the family had entered into an arrangement. If that is

the case, the execution of the family arrangement would lead to an inference from the conduct spread over several years and thus constituting an estoppel under Section 115 of the Indian Evidence Act, 1872.

38. In **Kale And Others v. Deputy Director of Consolidation and Others [(1976) 3 SCC 119]**, the Supreme Court considered a more or less similar situation and in paragraph Nos.42, 43 and 44, it was held as thus:

> "**42.** Finally in a recent decision of this Court in *S.Shanmugam Pillai v. K.Shanmugam Pillai [(1973) 2 SCC 312]* after an exhaustive consideration of the authorities on the subject it was observed as follows:
>
> > "Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.
>
> * * *

> As observed by this Court in *T. V. R. Subbu Chetty's Family Charities v. M.Gaghava Mudaliar (AIR 1961 SC 797)*, that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

In these circumstances there can be no doubt that even if the family settlement was not registered it would operate as a complete estoppel against Respondents 4 and 5. Respondent No.1 as also the High Court, therefore, committed substantial error of law in not giving effect to the doctrine of estoppel as spelt out by this Court in so many cases. The learned counsel for the respondents placed reliance upon a number of authorities in *Rachbha* v. *Mt Mendha* [AIR 1947 All 177 : 1946 ALJ 409] ; *Chief Controlling Revenue Authority* v. *Smt Satyawati Sood* [AIR 1972 Del 171 : ILR (1972) 2 Del 17 (FB)] and some other authorities, which, in our opinion have no bearing on the issues to be decided in this case and it is therefore not necessary for us to refer to the same.

43. Finally, it was contended by the respondents that this Court should not interfere because there was no error of law in the judgment of the High Court or that of Respondent No. 1.

This argument is only stated to be rejected.

44. In view of our finding that the family settlement did not contravene any provision of the law but was a legally valid and binding settlement in accordance with the law, the view of Respondent No.1 that it was against the provisions of the law was clearly wrong on a point of law and could not be sustained. Similarly, the view of the High Court that the compromise required registration was also wrong in view of the clear fact that the mutation petition filed before the Assistant Commissioner did not embody the terms of the family arrangement but was merely in the nature of a memorandum meant for the information of the court. The High Court further erred in law in not giving effect to the doctrine of estoppel which is always applied whenever any party to the valid family settlement tries to assail it. The High Court further erred in not considering the fact that even if the family arrangement was not registered it could be used for a collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties in pursuance of the family settlement and also for the purpose of applying the rule of estoppel which flowed from the conduct of the parties who having taken benefit under the settlement keep their mouths shut for full seven years and later try to resile from the settlement. In *Shyam Sunder* v. *Siya Ram* [AIR 1973 All 382, 389 : ILR

(1972) 2 All 368 : 1973 ALJ 53] it was clearly held by the Allahabad High Court that the compromise could have been taken into consideration as a piece of evidence even if it was not registered or for that matter as an evidence of an antecedent title. The High Court observed as follows:

> "The decision in *Ram Gopal* v. *Tulshi Ram* [AIR 1928 All 641, 649 : 26 ALJ 952] is clear that such a recital can be relied upon as a piece of evidence.
>
> * * *
>
> It is clear, therefore, that the compromise can be taken into consideration as a piece of evidence.... To sum up, therefore, we are of the view that the compromise could have been relied upon as an admission of antecedent title."

39. A similar question was considered by the Supreme Court in **S.Shanmugam Pillai & Ors v. K.Shanmugam Pillai & Ors [(1973) 2 SCC 312]**. Paragraph Nos.12 and 13 of the said decision read as under:

> "**12.** Exs. B-2 and B-5 read together may also be considered as constituting a family arrangement. The plaintiffs and the widows of V.Rm. Shanmugam Pillai are near relations. There were several disputes between the parties. The parties must have thought it wise that instead

of spending their money and energy in courts, to settle their disputes amicably. The father of Plaintiffs 1 and 2 and later on the plaintiffs were only presumptive reversioners, as also was the third plaintiff. None of them had any vested right in the suit properties till the death of the widows. Hence first the father of Plaintiffs 1 and 2 and later on the plaintiffs must have thought that a bird in hand is worth more than two in the bush. If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.

13. Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope."

40. In **B.L.Sreedhar and others v. K.M.Munireddy (dead) and others [(2003) 2 SCC 355],** the Supreme Court held that the principle of estoppel will apply if a person either by words or by

conduct consents to an act which lawfully would not have been done without such consent, and others are thereby induced to do that which they otherwise would not have done, and such a person cannot challenge the legality of the act to the prejudice of those who have acted upon it. (Paragraphs 18, 20, 22, 24, 25, 27, 28, 29 and 30).

41. In **Anil Rishi v. Gurbaksh Singh [(2006) 5 SCC 558],** the Supreme Court held that the burden of proof ordinarily rests with the party who substantially asserts the affirmative of the issue, but the onus of proof changes in a suit depending upon the evidence adduced. In this case, the evidence, oral as well as documentary, would speak volumes to substantiate the case pleaded by the defendants in the written statement.

Conclusion

42. The discussion as above persuades this Court to hold that the trial court was justified in dismissing the suit. It is beyond doubt that the plaintiff showed certain degree of inclination to adopt the life of an ascetic, but later for obvious reasons, felt to leave out. No explanation is

forthcoming, supported by cogent evidence to prove as to how and in what circumstances he had renounced his ascetic life. Therefore, it is a clear case where estoppel by conduct has been spelt out. The argument that in order to constitute a proper relinquishment of right over the property, an express relinquishment in the form of a deed should also be there, does not impress this Court because of the close relationship between the family members. The conscious silence of the plaintiff for eight years after execution of the partition deed of the year 1994 leads to an irresistible conclusion that the case set up by the plaintiff cannot be believed.

43. Resultantly, the substantial questions of law framed in RSA No.698/2015 are answered in favour of the appellants as follows:

(1) In the light of Exts.B4 to B8 letters, when the plaintiff himself has admitted unambiguously that he has adopted the life of a S*anyasi*, in view of the mandate under Section 58 of the Indian Evidence Act, 1872 the first appellate court was not justified in overturning the decision of the trial court.

(2) The finding of the first appellate court in reversing the dismissal of the suit, despite the overwhelming evidence to prove that the plaintiff has adopted the life of a sanyasi, is nothing but perverse.

(3) The conscious silence on the part of the plaintiff despite execution of Ext.A3 sale deed in favour of defendants 2 and 3 would lead to an irresistible conclusion that an estoppel by conduct has been clearly made out.

(4) The silence on the part of the plaintiff and also his own request to the brothers to partition the family property among themselves would give a clear indication that his acts constitute the principle of estoppel as provided under Section 115 of the Indian Evidence Act, 1872 and that the silence on his part for eight years is a clear indication that he has accepted the family settlement between the parties.

(5) In the light of Exts.B4 to B8 letters, Ext.B9 gazette notification and also Ext.B11 certificate issued by the *ashramam* and also in the light of unimpeachable evidence of DW2, the first appellate

court erred in reversing the judgment of the trial court holding that it is the burden of the defendants to prove that the plaintiff had adopted the life of a *sanyasi*.

44. Resultantly, the judgment and decree of the first appellate court (Sub Court, Chengannur) dated 15.01.2015 in A.S.No.270/2008 reversing the judgment and decree of the trial court (Munsiff's Court, Chengannur) dated 19.12.2007 in O.S.No.386/2002 are liable to be set aside and I do so. Accordingly, RSA No.698/2015 is allowed by reversing the judgment and decree dated 15.1.2015 in A.S.No.270/2008 of the Sub Court, Chengannur and restoring the judgment and decree dated 19.12.2007 in O.S.No.386/2002 of the Munsiff's Court, Chengannur.

45. Consequent to the findings in RSA No.698/2015 as above, nothing remains to be considered in RSA No.624/2015. Accordingly, the said appeal is dismissed.

The parties shall suffer their respective costs.

Sd/-
EASWARAN S.
JUDGE

jg