

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

AS.No. 23 of 1995 (D)

OS 6/1993 SUB COUERT, TTELLICHERRY.

.....

APPELLANT/PLAINTIFF:

*M.R.GOPALAN, S/O.NANI,
AGED 60 YEARS, MADAPPURAKKAL HOUSE,
EDAKKAD AMSOM, ATTADAPA DESOM,
KANNUR DISTRICT.(DIED)

*ADDL. A2 TO A6 IMPEADED

2.V.V.KAMALA, W/O.LATE GOPALAN,
MADAPPURAKKAL HOUSE, EDAKKAD AMSOM,
ATTADAPA DESOM, (P.O) ATADAPPA,
KANNUR DISTRICT.

3. V.V.MALATHI, D/O. DO. DO.

4. V.V.AMBIKA, D/O. DO. DO.

5. V.V.THANKAVALLY, D/O. DO. DO.

6. V.V.CHANDRASEKHARAN, S/O. DO. DO.

LEGAL HEIRS OF DECEASED SOLE APPELLANT ARE IMPEADED
AS THE ADDL. APPELLANTS (A2 TO A6) AS PER ORDER
DATED 20.7.2010 ON I.A.2897/2009.

BY ADV. SRI.P.R.VENKETESH

RESPONDENT(S)/DEFENDANTS:

*1.THERATH KUYIPALLI KAKKA, D/O.MANIKKAM,
CHEMBILODE AMSOM, KOYYODE DESOM, KOYYODE.P.O.,
KANNUR.(DIED)

*2. T.K.KARUNAKARAN, S/O.KAKKA, RESIDING DO.

*3. PURUSHOTHAMAN, RESIDING DO.

AS.No. 23 of 1995 (D)

- *4. KRISHNAN, RESIDING DO.(DIED)
- #5. KOMATH ROHINI, W/O.KUNHIKORAN, CHERUPARAMBA,
CHEMBILODE AMSOM, KOYYODE DESOM, KANNUR(DIED)
- #6. SUSHEELA, RESIDING DO.(DIED)
- #7. KAMALA, DO.
- #8. SHYAMALA, DO.
- #9. BABU, RESIDING DO.
- 10. T.K.KUNHIRAMAN, S/O.BACHI, EDAKKAD AMSOM,
ATTADAPA DESOM, KANNUR.
- **11. KRISHNAN, RESIDING DO.(DIED)
- 12. LAKSHMI, DO.
- 13. DEVI, W/O.GOVINDAN, CHEMBILODE AMSOM,
KOYYODE DESOM, KANNUR.
- ***14. SURENDRAN, DO. (DIED).
- 15. NIRMALA. DO.
- 16. SYHAMALA. DO.
- 17. PURUSHU, DO.
- 18. ANITHA, DO.
- 19. SADANANDAN, S/O.PANCHU, DO.
- 20. PREMAN, DO.
- 21. RAVEENDRAN, RESIDING DO. DO.
- 22. RAMAKRISHNAN, S/O. SARADAM, DO.
- 23. VANAJA, DO.
- 24. VALSALA, DO.
- 25. BHARGAVI, RESIDING DO.

*IT IS RECORDED THAT 1ST RESPONDENT DIED AND THE
RESPONDENTS 2, 3 & 4 ALREADY IN THE PARTY ARRAY ARE
HIS LEGAL HEIRS AS PER ORDER DATED 4.7.2014 IN MEMO
DATED 13.8.2002 VIDE C.F.NO.8429/2001.

AS.No. 23 of 1995 (D)

#IT IS RECORDED THAT 5TH RESPONDENT DIED AND THE
RESPONDENTS 6 TO 9 ALREADY IN THE PARTY ARRAY ARE HER
LEGALHEIRS AS PER ORDER DATED 4.7.2014 IN MEMO DATED 7.6.2006
VIDE C.F.NO.2148/2006.

*****ADDL. R26 TO 28 IMPEADED**

26. REMA, W/O.SURENDRAN, AGED 40 YEARS,
VANNANTEVALAPPIL HOUSE, ATTADAPPA, KANNUR.

27. MITHUN, S/O.SURENDRAN, AGED 11 YEARS, DO.

28. SUMESH, S/O.SURENDRAN, AGED 9 YEARS, DO.

LEGAL HEIRS OF DECEASED 14TH RESPONDENT ARE IMPEADED
AS THE ADDL. RESPONDENTS (R26 TO R28) AS PER ORDER
DATED 18.10.2011 IN C.M.A.4309/2002.

****ADDL.R29 TO R35 IMPEADED**

29. T.P.MANO HARAN, S/O.KRISHNAN, VANNANTEVALAPPIL HOUSE,
P.O.ATTADAPPA, KANNUR DISTRICT.

30. T.P.PAVITHRAN, S/O.KRISHNAN, VANNANTEVALAPPIL HOUSE,
P.O.ATTADAPPA, KANNUR DISTRICT.

31. T.P.MOHANAN, S/O.KRISHNAN, VANNANTEVALAPPIL HOUSE,
P.O.ATTADAPPA, KANNUR DISTRICT.

32. T.P.CHANDRAN, S/O.KRISHNAN, VANNANTEVALAPPIL HOUSE,
P.O.ATTADAPPA, KANNUR DISTRICT.

33. T.P.MITHRAN, S/O.KRISHNAN, VANNANTEVALAPPIL HOUSE,
P.O.ATTADAPPA, KANNUR DISTRICT.

34. T.P.SUDHA, D/O.KRISHNAN, VANNANTEVALAPPIL HOUSE,
P.O.ATTADAPPA, KANNUR DISTRICT.

35. T.P.SMITHA, D/O.KRISHNAN, VANNANTEVALAPPIL HOUSE,
P.O.ATTADAPPA, KANNUR DISTRICT.

LEGAL HEIRS OF DECEASED 11TH RESPONDENT ARE IMPEADED
AS ADDL. RESPONDENTS (R29 TO R35) AS PER ORDER
DATED 18.10.2011 IN IA.651/2004.

***ADDL. R36 TO 38 IMPEADED**

36. RATHI, W/O.LATE KRISHNAN,
RESIDING AT CHEMBILODE AMSOM,
KOYYODE DESOM, KOYYODE.P.O., KANNUR.

37. PRIJESH, S/O. DO. DO.

AS.No. 23 of 1995 (D)

38. KRISHNAPRIYA, D/O.LATE KRISHNAN,
RESIDING AT CHEMBILODE AMSOM,
KOYYODE DESOM, KOYYODE.P.O., KANNUR.

R5 TO R8 BY ADV. SRI.GRASHIOUS KURIAKOSE
R17 BY ADVS. SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 21-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

P.B.SURESH KUMAR, J.

A.S.No.23 of 1995

Dated this the 21st day of May, 2015

JUDGMENT

The plaintiff in a suit for partition is the appellant in this appeal.

2. The plaint schedule properties belonged to Therath Kuyipalli Tharavad and the plaintiff and defendants are the sharers of the said properties. According to the plaintiff, the defendants have executed two partition deeds excluding him; that the said partition deeds are not binding on him and that he is therefore, entitled to a decree for partition of the plaint schedule properties by metes and bounds, ignoring the partition deeds executed by the defendants.

3. The defendants 1 to 6 and 10 to 25 remained ex parte. Defendants 7 to 9 filed a written statement, contending among others, that though the plaintiff was not

a party to the partition deeds executed by the defendants, properties have been allotted to the plaintiff also in the said partition deeds and as such, the plaintiff is not entitled to the decree sought. They have also contended that the plaintiff has constructed a house in one of the properties allotted to him as per the partition deeds executed by the defendants and therefore, the plaintiff having accepted the partition deeds, cannot question the same.

4. The evidence in the case consists of the testimony of the plaintiff and Exts.A1 to A3 on the side of the plaintiff and the testimony of the sixth defendant and Exts.B1 to B3 on the side of the defendants. Two documents which were called for by the court below at the instance of the parties were also marked in the proceedings as Exts.X1 and X2. Among the documents on record, Exts.A1 and Ext.B2 are the partition deeds executed by the defendants, excluding the plaintiff.

5. The court below, on appraisal of the materials on

record, found that in so far as the plaintiff is not a party to Exts.A1 and B2 partition deeds, the same is not binding on him and that he is, therefore, entitled to the decree sought by him. A preliminary decree was accordingly passed by the court below, declaring the 180/1080 shares of the plaintiff over the plaint schedule properties. The court below also directed that since the parties are holding properties separately, their possession shall not be disturbed to the extent possible while effecting partition. The plaintiff is aggrieved by the said decision of the court below to the extent the same does not mention about the partibility of the building constructed by him in a portion of the plaint schedule property. According to him, in the absence of any direction in the judgment regarding the partibility of the building constructed by him, the said building is likely to be partitioned among the sharers.

6. Heard the learned Counsel for the appellant and also learned Senior Counsel for respondents 5 to 8.

7. The learned counsel for the appellant submitted that there is no dispute between the parties to the fact that the building occupied by the plaintiff in the plaint schedule property is a building constructed by him. Consequently, according to the learned counsel, the defendants have not claimed any right in the said building. According to the learned counsel, in the aforesaid circumstances, the court below should have clarified in its decision that the said building is not liable to be partitioned.

8. As rightly pointed out by the learned counsel for the appellant, the court below found that the appellant has constructed a building in a portion of the plaint schedule property which was allotted to him as per the terms of Exts.A1 and B2 partition deeds. The court below also noticed in its decision that the contesting defendants have not raised any claim over the said building. In the said circumstances, I agree with the submission made by the learned counsel for the appellant that the court below

should have clarified in the judgment that the building constructed by the appellant in the property is not liable for partition.

In the result, the impugned judgment is confirmed with the clarification that the building constructed by the appellant as referred to in paragraph 11 of the judgment is not liable for partition.

P.B.SURESH KUMAR, JUDGE.

smm