

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE THOTTATHIL B. RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

AS.No. 111 of 2003 ()

AGAINST THE ORDER/JUDGMENT IN OS 313/1994 of PRL. SUB COURT,
THALASSERY DATED 29-11-1997

APPELLANT(S) : / DEFENDANT NOS. 1, 6 TO 8

*1. MATTUVAKKARATHI ALIAS KATTAMPALLIKARATHI
PUTHIYAPURAYIL KHADEEJA, DIED
D/O. PATHUNHI, AGED 63 YEARS, OCCUPATION NIL,
KANNUR -11 AMSOM, TALAP WARD, KANNUR DISTRICT
KANNUR TALUK.

**2. FEROOX, AGED 13 YEARS (MINOR)
S/O. SUBAIDA, RESIDING AT DO. DO. (DECLARED MAJOR)

***3. NOORGAHAN, AGED 9 YEARS, MINOR,
D/O. SUBAIDA, RESIDING IN KANNUR II AMSOM,
TALAP WARD,
KANNUR TALUK, KANNUR DISTRICT. (DECLARED MAJOR)

****4. RAJNA, AGED 6 YEARS, D/O. SUBAIDA,
RESIDING AT DO. DO. (DECLARED MAJOR)

MINOR APPELLANTS 2 TO 4 REPRESENTED BY GRAND
MOTHER MATTUVAKKARATHI ALIAS KATTAMPALLIKARATHI
PUTHIYAPURAYIL KHADEEJA, 1ST APPELLANT
RESIDING AT DO. DO.

*(DEATH OF THE 1ST APPELLANT IS RECORDED AND THE REPENDENT NOS. 2 TO 5
ARE RECORDED AS LEGAL HEIRS OF THE DECEASED 1ST APPELLANT AT THE RISK
OF THE APPELLANTS AS PER ORDER DATED 10.02.2011 IN MEMO CF NO. 739/11
DATED 21.1.11.)

APPELLANTS 2 TO 4 DECLARED AS MAJOR.

**THE SECOND APPELLANT DECLARED AS MAJOR AND PERMITTED TO PROCEED WITH
THE APPEAL AS HIS OWN AS PER ORDER DATED 23.06.2015 IN
I.A.NO.1615/2005.

*** THE THIRD APPELLANT DECLARED AS MAJOR AND PERMITTED TO PROCEED
WITH THE APPEAL AS HER OWN AS PER ORDER DATED 23.06.2015 IN
I.A.NO.1616/2005.

****THE FOURTH APPELLANT DECLARED AS MAJOR AND PERMITTED TO PROCEED
WITH THE APPEAL AS HER OWN AS PER ORDER DATED 23.06.2015 IN
I.A.NO.1617 OF 2005.

BY ADVS. SRI. K. R. AVINASH (KUNNATH)
SRI. ABDUL RAOOF PALLIPATH

RESPONDENT(S)/PLAINTIFF&DEFENDANT NOS.2, 3, 5 AND 9 TO 11:

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1. PONNAVALAPPIL SALAHUDHEEN, S/O.HAMSA HAJI,
BUSINESSMAN, AGED 30 YEARS, MADAYI AMSOM
PUTHIYANGADI DESOM, KANNUR TALUK.
 2. HASHIM S/O. KHADEEJA (1ST APPELLANT)
BUSINESSMAN, RESIDING IN KANNUR II AMSOM,
TALAP DESOM
KANNUR TALUK, KANNUR DISTRICT.
 3. BROTHER MAHABOOB, AGED 38 YEARS,
BUSINESSMAN, RESIDING IN KANNUR II AMSOM,
TALAP WARD,
KANNUR TALUK, KANNUR DISTRICT.
 4. SISTER SUBAIDA, AGED 35 YEARS,
OCCUPATION NIL, RESIDING IN KANNUR II AMSOM
TALAP WARD, KANNUR TALUK, KANNUR DISTRICT.
 5. M.SUBAIDA, AGED 28 YEARS,
D/O.MUHAMMED, RESIDING IN MUNDAYAN HOUSE
OLADATHAZHA AZHIKODE AMSOM AND DESOM, POST AZHIKODE
KANNUR TALUK, KANNUR DISTRICT.
 6. SABEENA, AGED 10 YEARS, MINOR, RESIDING
IN DO. DO.
 7. NABEER, AGED 7 YEARS, MINOR, RESIDING
IN DO. DO.

(MINOR RESPONDENTS NO. 6 & 7 ARE REPRESENTED
BY GUARDIAN MOTHER 5TH RESPONDENT)

R1 BY ADV. SRI.T.KRISHNAN UNNI (SR.)
R1 BY ADV. SRI.ANIL THOMAS (T)
R1 BY ADV. SMT.K.V.RESHMI

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 23-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
A.S.No.111 of 2003
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Dated this the 23rd day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal arises from a suit for specific performance of a contract for sale. Defendant Nos.6, 7 and 8, who were minors at the institution of the suit, and the heirs of the first defendant are the appellants.
- 2.We have heard the learned counsel for the appellants and the learned counsel for the contesting respondent/plaintiff.
- 3.Keeping aside all other submissions for the time being, we think that what gets projected ultimately is the fact as to whether the mother of the appellants had the right to enter into a contract to alienate the share of those three minors who are the appellants before us. Specific ground in that regard is raised in this appeal among grounds of appeal. We also fortify to think that the

contractual liability, if any, of the minors under any such contract for sale needs to be looked into from different angles. This has to be done at the first instance, by the trial court. We are also told that with the passage of time, the parties are likely to arrive at a settlement, which will be beneficial to both sides. We are, however, not persuaded to refer this case for mediation at this end, since very many technical issues may arise regarding the mediation settlement agreement.

4. For the aforesaid reasons and because of the fact that the rights in re the minors as regards the capacity to contract and also as regards the eligibility of their mother to represent their interest in entering into a contract for sale have not been adjudicated by the court below, we think that the matter cannot but be remitted for reconsideration in accordance with law.

5. In the result, the impugned judgment and the decree are vacated and the suit is remanded for reconsideration de novo. We also

leave open the eligibility of the appealing defendants to request the court below to take on record the additional written statement and also their defence as regards the existence of a thavazhi or otherwise.

In view of the fact that this order of remit is not for any reason, exclusively attributable to the appellants, we hold that the appellants are entitled to refund of the entire court fee paid on this appeal. Hence, refund the entire court fee paid on this appeal to the appellants through their learned counsel, who is appearing for them now. Parties are directed to mark appearance before the court below on 29.07.2015. Re-transmit lower court records, if it is available before this Court.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

js

“It is clarified that the direction for refund of court fee,

contained in the last paragraph of the judgment dated 23/06/2015 in A.S No.111/2003 shall be treated as a direction that no court fee shall be collected or recovered in relation to this appeal (AS No.111/2003)” vide order dated 19.08.2015 in A.S.No.111/2003.

Sd/-
Registrar (Judicial)