

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

AS.No. 353 of 1998 ()

AGAINST THE ORDER/JUDGMENT IN OS 384/1995 of III ADDL.SUB COURT,
KOZHIKODE DATED 13-10-1997

APPELLANT(S)/PLAINTIFF:

M.SURAJ,
AGED 43 YEARS,
S/O.UNNEERI,
RESIDING AT 19/539, MAMMIYIL HOUSE,
NOORIYAD, KASABA AMSOM DESOM,
KOZHIKODE TALUK.

BY ADVS.SRI.P.C.SASIDHARAN
SRI.O.V.MANIPRASAD

RESPONDENT(S)/DEFENDANTS:

1. MAMMIYIL SAROJINI,
AGED 67 YEARS,
W/O.UNNEERI, MANGALASSERY PARAMBA,
MANKAVE, VALAYANAD AMSOM DESOM OF KOZHIKODE TALUK.
2. MAMMIYIL SUDHA, AGED 42 YEARS,
D/O.UNNEERI, MANAGALASSERY PARAMBA,
MANKAVE, VALAYANAD AMSOM DESOM,
KOZHIKODE TALUK.
3. P.CHANDRAN, AGED 55 YEARS,
HUSBAND OF LATE GEETHA,
RESIDING AT FIRE OFFICERS' QUARTERS,
NAGARAM AMSOM DESOM, KOZHIKODE TALUK.
4. NITHIN, AGED 13 YEARS (MINOR),
S/O.CHANDRAN, REPRESENTED BY GUARDIAN AND
FATHER THE 3RD RESPONDENT.

R2 BY ADV. SRI.C.P.MOHAMMED NIAS
R3 BY ADV. SRI.NIRMAL. S

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 04-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

**THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

I.A.No.571 of 2015
&
A.S.No.353 of 1998

Dated this the 4th day of June, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard.
2. The plaintiff in a suit for specific performance for contract is the appellant.
3. The plaintiff, the 2nd defendant and late Geetha are siblings. The 1st defendant is their mother. Geetha left behind her husband and a child. The plaintiff sued his mother, surviving sister and legal representatives of late Geetha for assignment of rights in what he called as property which originally belonged to the joint family consisting of those persons. The trial court considered the different materials and held that the contract for sale was not enforceable at the instance of the plaintiff. It was also held that whatever be the nature of the

protective orders issued during the currency of the suit, they were not determinative of the final result and the plaintiff could not take advantage of any of those directions.

4. Pending this appeal, the defendants, particularly, 2nd appellant Sudha levied a fresh suit for recovery of possession of the property from the plaintiff herein, who was, in fact, put in possession by the defendants herein and that led to the suit for recovery of possession.

5. Through I.A.No.571 of 2015, the respondents have produced the judgment and decree in A.S.No.221 of 2002 of the District Court, Kozhikode, under which Sudha obtained decree for recovery of possession against the appellant/plaintiff in O.S.No.385 of 1995. Sufficient cause is shown in terms of Order XLI Rule 27 of the Code of Civil Procedure for admission of such additional evidence. I.A.No.571 of 2015 is accordingly allowed and the documents produced therewith are admitted into evidence as Exhibits B13, B14, B15 and B16 respectively following the documents marked before the trial.

6.The decision evidenced by the additional evidence determines the claims made by the appellant and operates as res judicata as against the claim for specific performance levied through this appeal. On the basis of the aforesaid documents, namely, Exhibits B13 to B16, the appellant herein is only to be non-suited. This appeal, therefore, fails.

In the result, this appeal is dismissed. No costs.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

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