

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

CRP No. 2190 of 1999 (A)

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(EP.NO. 27/1996 IN OS.NO.65/1125(ME) OF DISTRICT COURT, THRISSUR  
DATED 19-08-1999)  
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REVISION PETITIONER(S)/RESPONDENTS/JUDGMENT DEBTORS 5 TO 17 :  
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1. BHARATHI, W/O. THEKKOTTAYIL PRABHAKARAN AND  
D/O. VADERIYATTIL KUMARAN, MUNDOOR DESOM,  
ANJOOR VILLAGE, THRISSUR TALUK
2. ACHUTHAN, S/O. VADEERIYATTIL KUMARAN,  
KOORKANCHERY DESOM, KANIMANGALAM VILLAGE,  
THRISSUR TALUK.
- \*3. NARENDRAN, S/O. VADERIYATTIL KUMARAN,  
MUNDUR DESOM, ANJOOR VILLAGE, THRISSUR TALUK, (DIED)
4. SYAMALA, D/O. VADERIYATTIL KUMARAN & W/O.  
VAZHETH CHAKRAPANI, KAZHIMBRAM DESOM,  
EDAMUTTAM AMSOM, CHAVAKKAD TALUK, THRISSUR.
5. AJITHA, D/O.VADERIYATTIL KUMARAN & W/O. MANCHANGATTIL  
VIDYADHRAN, PERINGANDOOR VILLAGE, DESOM,  
THRISSUR TALUK.
6. MADHAVI, W/O.VADERIYATTIL KUNHIRAMAN, ANJOOR VILLAGE,  
THRISSUR TALUK.
7. OMANA, W/O. ERAKKATH PADMANABHAN AND D/O.  
VADERIYATTIL KUNHIRAMAN, MUNDATHIKODE, THRISSUR DIST.
8. VILASINI, S/O. URAYAMPURATH SOMAN, VELIYANNUR,  
THRISSUR.
9. KARTHIAYANI, W/O. THARAYIL MOHANAN,  
VADOOKKARA DESOM,  
P.O.KOORKKANCHERY, THRISSUR DIST.
10. SUKUMARAN, S/O.VADERIYATTIL KUNHIRAMAN,  
ANJOOR VILLAGE, THRISSUR TALUK.

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11. AMBIKA, W/O.CHANDRAN, KANDIRATHY VEEDU,  
POORKULAM P.O., KUNNAMKULAM, THRISSUR DIST.

12. BEENA, W/O. EDATHARA MANOHARAN,  
EDATHARA VEEDU, KIZHAKKUMURI,  
P.O. PERAMANGALAM, THRISSUR.

13. SUJATHA, W/O. UNNIMON, KURUMBOORU VEEDU,  
ELAVALLY DESOM, KOKKUR, THRISSUR DIST.

\*(ADDITIONAL PETITIONERS 14 TO 16 IMPEADED)

\*ADDL.R14: AMBIKA, W/O.LATE NARENDRAN,  
VANDERIYATTIL HOUSE, MUNDUR DEDOM,  
ANJOOR VILLAGE, THRISSUR.

\*ADDL.15. MANU (MINOR) W/O.LATE NARENDRAN,  
VANDERIYATTIL HOUSE, MUNDUR DEDOM,  
ANJOOR VILLAGE, THRISSUR.

\*ADDL.16. MADHU (MINOR) S/O.LATE NARENDRAN,  
VANDERIYATTIL HOUSE, MUNDUR DEDOM,  
ANJOOR VILLAGE, THRISSUR.

(MINORS 15 & 16 REPRESENTED BY THEIR GUARDIAN AND MOTHER 14TH  
PETITIONER AMBIKA,W/O.LATE NARENDRAN,VANDERIYATTIL HOUSE,  
MUNDUR, THRISSUR)

\*PETITIONER NO.3 DIED. ADDL. PETITIONERS 14 TO 16 ARE IMPEADED AS  
THE LEGAL REPRESENTATIVES OF THE DECEASED 3RD PETITIONER VIDE  
ORDER DATED 28.1.2002 ON CMP.NO. 214/2001 IN C.R.P.2190/99

BY ADV. SRI.N.P.SAMUEL

RESPONDENT(S)/DECREE HOLDERED 2 TO 14/RESPONDENTS 4 AND 18/ JUDGMENT  
DEBTORS 4 & 18:

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1. INDIRA, W/O.M. NIRMAL MOHAN,  
MOOTHEDATH HOUSE, P.O.KADAVANADU,  
PONNANI, MALAPPURAM DIST.

2. SOBHA, W/O. PANJAN, CHEEROTH HOUSE,  
CHAVAKKAD, MULLASSERY, CHAVAKKAD TALUK,  
THRISSUR.

3. PREMAN, S/O. BALAN, PANIKKASSERY HOUSE,  
CHEMMANNUR DESOM, ARTHAT VILLAGE,  
TALAPPILLY TALUK , THRISSUR.

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4. SUDHA, W/O.V.P.NARAYANAN, VATTAMPARAMBIL HOUSE,  
PONNANI, MALAPPURAM DISTRICT.
5. DEVAYANI, W/O. PAMBUNGAL KUMARAN,  
CHITILAPPILLY VILLAGE, THRISSUR TALUK,  
THRISSUR DIST.
6. DIVAKARAN, D/O.PAMBUNGAL KUMARAN,  
CHITILAPPILLY VILLAGE, THRISSUR TALUK,  
THRISSUR DIST.
7. MADHAVI, D/O. PAMBUNGAL UNNI ALIAS CHENNAN,  
CHITILAPPILLY VILLAGE, THRISSUR DIST.
8. JANAKI, D/O.PAMBUNGAL UNNI ALIAS CHENNAN,  
CHITILAPPILLY VILLAGE, THRISSUR DIST.
9. DEVAKY, D/O. PAMBUNGAL UNNI ALIAS CHENNAN,  
CHITILAPPILLY VILLAGE, THRISSUR DIST.
10. SUBHADRAN, D/O.PAMBUNGAL UNNI ALIAS CHENNAN,  
CHITILAPPILLY VILLAGE, THRISSUR DIST.
11. SREEMATHI, D/O. PAMBUNGAL UNNI ALIAS CHENNAN,  
CHITILAPPILLY VILLAGE, THRISSUR DIST.
12. RETNAVALLY, D/O.PAMBUNGAL UNNI ALIAS CHENNAN,  
CHITILAPPILLY VILLAGE, THRISSUR DIST.
13. RAVEENDRAN, S/O.VADERIYATTIL KUMARAN,  
MUNDUR DESOM, AMJOOR VILLAGE, THRISSUR DIST.
- \*14. RAVEENDRAN, AGRICULTURE,  
S/O.VADERIYATTIL KUMARAN,  
MUNDUR DESOM, AMJOOR VILLAGE, THRISSUR. (DIED)
15. DILEEP, S/O. BALAN, PANIKKASSERY HOUSE,  
CHEMMANNOOR DESOM, ARTHAT VILLAGE,  
TALAPPILLY TALUK, THRISSUR.

**\*ADDL. RESPONDENTS 16 TO 18 IMPEADED**

- \*ADDL.R16. JAYAPRAKASH, S/O.VADERIYATTIL RAVEENDRAN,  
SANKARAMANGALAM. P.O.,  
MUNDOOR, THRISSUR-680 541
- \*ADDL.R17. MOHANDAS, S/O. VADERIYATTIL RAVEENDRAN,  
VADERIYATTIL HOUSE,  
CHITILAPPILLY VILLAGE, THRISSUR DISTRICT

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**\*ADDL.R18. SURESH BABU, S/O.VADERIYATTIL RAVEENDRAN,  
SANKARAMANGALMA P.O.,  
MUNDOOR, THRISSUR-680 541**

**\*(ADDITIONAL RESPONDENTS 16 TO 18 BEING THE LEGAL HEIRS OF THE  
DECEASED 14TH RESPONDENT ARE IMPEADED IN THE CRP VIDE ORDER DATED  
4.6.2015 IN I.A.NO. 2293/14 IN CRP.NO. 2190/99)**

**R9 BY ADV. SRI.RAJIT**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 08-07-2015, ALONG WITH CRP.NO. 2225/1999, THE COURT  
ON THE SAME DAY PASSED THE FOLLOWING:**

**sts**

**P.BHAVADASAN, J.**

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C.R.P. Nos. 2190 & 2225 of 1999  
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Dated this the 08<sup>th</sup> day of July, 2015

**ORDER**

These revision petitions are directed against the common order dated 19.08.1999 in E.P.Nos.27/1996 and 25/1997 in O.S.No. 65/1125(M.E.) before the District Court, Thrissur. By the said order, the court below held that the final decree passed on 25.06.1955 is executable.

2. The facts absolutely necessary for the disposal of these revision petitions are as follows:

Three brothers, namely, Vaderiyattil Ezhavan Ittaman, Achuthan and Parangodan married two ladies by name Innuli and Kunhikkali. They had seven children by name Lekshmi, Kumaran, Kunhiraman, Innuli, Narayani, Valli and Devaky. The family possessed extensive immovable properties and so also a Temple. In the year 1121 M.E., there was a partition in which two Thavazhies branched out; the first Thavazhi consisting of Innuli and Kumaran and the second

Thavazhi consisting of Kunhikali and KunhIRaman by way of document No. 2354/1121 of Mundur Sub Registry. Subsequently, Lekshmi, one of the daughters of the three brothers, filed a suit namely O.S.No.65/1125 M.E. before the District Court, Thrissur seeking partition of the properties belonging to the Tharwad. She sought that the properties be divided into 11 equal shares and one such share be allotted to her. It is not in dispute that the preliminary decree was passed on 13.08.1954. It is also not in dispute that the final decree was passed on 25.06.1955. The petitioners have a case that even though preliminary decree and final decree were passed, possession continued with the petitioners herein and they were enjoying the property and that respondents were never in possession of the property. It is further averred by the petitioners before this Court that in spite of the preliminary decree and the final decree, the members of the Tharwad gathered before the Temple and took a vow to continue in terms of the partition deed already

made mention of. The family so continued.

3. While things stood so, in 1996, the legal heirs of the 6<sup>th</sup> defendant in the suit, Narayani filed E.P.No.27/1996 and the legal heirs of the 5<sup>th</sup> defendant, Innuli filed E.P.No. 25/1997 seeking to enforce the final decree in the partition suit.

4. The petitioners resisted the petitions mainly by pointing out that the execution proceedings are hopelessly barred by limitation and so also that they have been in continuous possession of the property for a long period claiming adverse possession and limitation.

5. The court below, holding that the decree becomes executable only when it is engrossed on stamp paper alone, held that that execution is not barred by limitation and also held that the decree holders are entitled to shares in the property. It is that order that is challenged before this Court in these revision petitions.

6. These revision petitions will have to succeed on a very short ground. True, as things stood then, the law was that the decree becomes executable only when it is engrossed on stamp paper and if that be the position of law as it was then, things would have been different. But unfortunately for the decree holders, who filed E.P.Nos. 27/1996 and 25/1997, this position was reconsidered in the decision reported in **Chiranji Lal v. Haridas** [2005 (2) KLT 1018], wherein, the period of executability of a final decree for partition was considered in detail. Referring to Article 136 of the Limitation Act, the Apex Court held as follows:

“13. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As above noted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree on stamp paper and there is no statutory obligation on the Court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. In the present case the Court has not passed an order directing the

parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing of the decree or there is no time limit fixed by law, does not mean that the party can furnish stamp papers as its sweet will and calim that the period of limitation provided under Art. 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper. The engrossment of the decree on stamp paper would relate back to the date of the decree, namely, 7<sup>th</sup> August, 1981, in the present case. In this view the execution application filed on 21<sup>st</sup> March, 1994 was time barred having been filed beyond the period of twelve years prescribed under Art. 136 of the Act. The High Court committed illegality in coming to the conclusion that it was not barred by limitation."

7. The Apex Court had occasion to hold that engrossment of decree on a stamp paper had nothing to do with the executability as the period for execution of the

decree commence to run from the date of the decree. That being the law, obviously the execution petitions, namely E.P.Nos. 27/1996 and 25/1997 are hopelessly barred by limitation. The court below was not justified in holding that the decree could be executed.

For the above reasons, these revision petitions are allowed and E.P.Nos. 27/1996 and 25/1997 shall stand dismissed. However, it is made clear that any right which the respondents in these petitions may have, shall remain intact and they are given liberty to enforce such rights in accordance with law.

Sd/-  
**P.BHAVADASAN**  
**JUDGE**

ds

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P.A. to Judge