

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

CRP.No. 541 of 2012 ()

IA.1677/2012 IN OS 6/1997 of SUB COURT, MANJERI

REVISION PETITIONER(S)/PETITIONER:

MUHAMMADALI, AGED 68 YEARS
S/O.NALUKANDAN ABDURAHIMAN,
EDAKKARA AMSOM DESOM
NILAMBUR TALUK, PIN-679 329.

BY ADV. SRI.M.A.ABDUL HAKHIM

RESPONDENT(S)/RESPONDENTS 1,3 TO 7,9 TO 16:

- * 1. KHADEEJA (DIED)
D/O.VEEERANKUTTY, PARUTHIKKUNNAN HOUSE, KAPPIL DESOM
WANDOOR AMSOM, NILAMBUR TALUK, PIN-679 329.
- 2. ALAVI
S/O.VEEERANKUTTY, PARUTHIKKUNNAN HOUSE, KAPPIL DESOM
WANDOOR AMSOM, NILAMBUR TALUK, PIN-679 329.
- 3. MUHAMMED
S/O.VEEERANKUTTY, PARUTHIKKUNNAN HOUSE, KAPPIL DESOM
WANDOOR AMSOM, NILAMBUR TALUK, PIN-679 329.
- 4. PATHUTTY
D/O.VEEERANKUTTY, PARUTHIKKUNNAN HOUSE, KAPPIL DESOM
WANDOOR AMSOM, NILAMBUR TALUK, PIN-679 329.
- 5. UMMER
S/O.VEEERANKUTTY, PARUTHIKKUNNAN HOUSE, KAPPIL DESOM
WANDOOR AMSOM, NILAMBUR TALUK, PIN-679 329.
- 6. ABDURAHIMAN
S/O.VEEERANKUTTY, PARUTHIKKUNNAN HOUSE, KAPPIL DESOM
WANDOOR AMSOM, NILAMBUR TALUK, PIN-679 329.
- 7. NABEES
D/O.MUHAMMED, PARUTHIKKUNNAN HOUSE, KAPPIL DESOM
WANDOOR AMSOM, NILAMBUR TALUK, PIN-679 329.
- 8. SUBAIDA
D/O.USSANKUTTY, KAPPIL DESOM, WANDOOR AMSOM
NILAMBUR TALUK, PIN-679 329.

9. HABEEBA RAHMAN
D/O.USSANKUTTY, KAPPIL DESOM, WANDOOD AMSOM
NILAMBUR TALUK, PIN-679 329.
 10. FIROSBABU
S/O.USSANKUTTY, KAPPIL DESOM, WANDOOD AMSOM
NILAMBUR TALUK, PIN-679 329.
 11. BANEESHU
S/O.USSANKUTTY, KAPPIL DESOM, WANDOOD AMSOM
NILAMBUR TALUK, PIN-679 329.
 12. SAIJAL
S/O.USSANKUTTY, KAPPIL DESOM, WANDOOD AMSOM
NILAMBUR TALUK, PIN-679 329.
 13. SAJANA
D/O.USSANKUTTY, KAPPIL DESOM, WANDOOD AMSOM
NILAMBUR TALUK, PIN-679 329.
 14. SAFIYA
D/O.USSANKUTTY, KAPPIL DESOM, WANDOOD AMSOM
NILAMBUR TALUK, PIN-679 329.
- * ADDL.R15 AYISHA, D/O.PULIKKUNNUMEL BAPPU @ MUHAMMED
ALIKKAPARAMBIL, KUYIYAMPOYIL HOUSE, WANDOOD AMSOM
VANIYAMBALAM DESOM PO, MALAPPURAM DISTRICT
 - * ADDL.R16 NAZAR, S/O.PULIKKUNNUMEL BAPPU @ MUHAMMED
ALIKKAPARAMBIL, KUYIYAMPOYIL HOUSE, WANDOOD AMSOM
VANIYAMBALAM DESOM PO, MALAPPURAM DISTRICT
 - * ADDL.R17 FOUSIA, D/O.PULIKKUNNUMEL BAPPU @ MUHAMMED
ALIKKAPARAMBIL, KUYIYAMPOYIL HOUSE, WANDOOD AMSOM
VANIYAMBALAM DESOM PO, MALAPPURAM DISTRICT
 - * ADDL.R18 NADEERA, D/O.PULIKKUNNUMEL BAPPU @ MUHAMMED
ALIKKAPARAMBIL, KUYIYAMPOYIL HOUSE, WANDOOD AMSOM
VANIYAMBALAM DESOM PO, MALAPPURAM DISTRICT
 - * ADDL.R19 RAMLATH, D/O.PULIKKUNNUMEL BAPPU @ MUHAMMED
ALIKKAPARAMBIL, KUYIYAMPOYIL HOUSE, WANDOOD AMSOM
VANIYAMBALAM DESOM PO, MALAPPURAM DISTRICT
 - * ADDL.R20 ZEENATH, S/O.PULIKKUNNUMEL BAPPU @ MUHAMMED
ALIKKAPARAMBIL, KUYIYAMPOYIL HOUSE, WANDOOD AMSOM
VANIYAMBALAM DESOM PO, MALAPPURAM DISTRICT

(ADDL.R15 TO R20 ARE IMPEADED AS THE LRS OF DECEASED R1 VIDE
ORDER DTD 31.7.15 IN IA.371/15)

R1,2,3,4,6,7,8,10,12,13,14 BY ADV. SRI.RAJESH R KORMATH
ADDL.R15-R20 BY ADV. SRI.R.RAJESH KORMATH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. KEMAL PASHA, J.

.....
C.R.P. No.541 of 2012
.....

Dated this the 10th day of August, 2015

ORDER

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In a suit for partition, the petitioner was the 1st defendant. Initially, he did not file a written statement. Then, the learned counsel appearing for the petitioner before the court below reported no instructions before the court below. Consequently, he was set *ex-parte*. Subsequently, a preliminary decree was passed in the matter on merits. The matter was taken up in appeal by the 2nd defendant and others. Ultimately, it was revealed that some persons, who are necessary parties, were not impleaded. Therefore, a joint application was filed by the appellant as well as the respondents and the matter was remitted to the court below for enabling those persons to come on record. Subsequently, impleading applications were filed and parties were impleaded.

2. During the pendency of the appeal, the petitioner approached the court below with a petition to get the *ex-parte* decree against him, set aside. That application happened to be dismissed on the ground of delay. The petitioner filed a CMA. It was while the CMA was pending that the matter was remitted by the appellate court to the court below as aforesaid.

3. Consequently, by thinking that the petitioner also would get an opportunity to contest the matter before the court below, the CMA filed by him was not pressed and it was dismissed. After that, the petitioner again approached the court below and participated in the proceedings. He has filed a written statement and also objections to the Commissioner's report and all. The proceedings continued with his presence for some time. Thereafter, it was noticed that earlier he was set *ex-parte* in the suit. Then, the petitioner filed an application before the court below for getting the *ex-parte* order against him set aside. That was

dismissed through the impugned order.

4. Heard learned counsel for the petitioner and learned counsel for the respondents.

5. The learned counsel for the respondents has pointed out that the CRP itself is bad for *non joinder* of necessary parties as the petitioner is alleging fraud against the 2nd defendant, who had contested the suit earlier, and therefore, he ought to have impleaded the 2nd defendant in the CRP. It is also argued that some more persons, who ought to have been arrayed as necessary parties to the CRP, are not impleaded and, therefore, he is not entitled to any relief in the CRP.

6. It has to be noted that the suit is of the year 1997. Still, the suit is at the stage before the passing of a preliminary decree. It is a fact that the petitioner has taken up a contention that the property cannot be subjected to partition. Of course, other parties are also there in the suit. Let the court below to take a proper decision in the matter.

When the preliminary decree earlier passed in the matter was set aside by the appellate court on consent, and the matter was remitted to the court below for fresh disposal in accordance with law, it is only just and appropriate in the interest of justice to permit the petitioner also to participate in the proceedings. Apart from that, for quite some time, the petitioner had also participated in the proceedings and he has filed written statement in the matter. The fact that once he was declared *ex-parte* and a decree was passed against him, does not assume any importance at all, especially when the decree originally passed was set aside and the matter has been remitted to the court below for fresh disposal.

7. All matters with regard to the allegations levelled against the 2nd defendant by the petitioner and all, are left open to be decided by the court below. The court below shall make every endeavor to dispose of the suit, as expeditiously as possible, at any rate, within a period of

three months from the date of receipt of a copy of this judgment.

In the result, this C.R.P. is allowed and the impugned order stands set aside. The *ex-parte* order passed against the petitioner stands set aside. The court below shall permit the petitioner to participate in the proceedings.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/11/08

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PA to Judge