

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

CRP.No. 435 of 2015

**AGAINST THE ORDER IN I.A.NO.6846/2012 IN I.A.NO.5407/2005 IN
O.S.NO. 647/1995 OF THE II ADDITIONAL SUB COURT , KOZHIKODE**

PETITIONER(S) :

1. **SUNITHA, AGED 42 YEARS,
D/O.LATE VARADA RAJA BHAT, KACHERI AMSOM DESOM,
KOZHIKODE TALUK AND DISTRICT.**
2. **GANESH, AGED 43 YEARS,
S/O.LATE VARADARAJ BHAT, KACHERI AMSOM DESOM,
KOZHIKODU TALUK, KOZHIKODU DISTRICT, PIN-673 011.**
3. **SAVITHA, AGED 41 YEARS,
D/O.LATE VARADA RAJA BHAT, KACHERI AMSOM DESOM,
KOZHIKODE TALUK AND DISTRICT.**
4. **MANJU NATH, AGED 39 YEARS,
S/O.LATE VARADA RAJA BHAT, KACHERI AMSOM DESOM,
KOZHIKODE TALUK AND DISTRICT.**
5. **GIREESH, AGED 38 YEARS,
S/O.LATE VARADA RAJA BHAT, KACHERI AMSOM DESOM,
KOZHIKODE TALUK AND DISTRICT.**

**BY ADVS.K.RAMA CHANDRAN
SRI.E.NARAYANAN
SRI.P.VISWANATHAN**

RESPONDENT(S) :

1. **S.BRAHMANANTH, AGED 48 YEARS,
S/O.LATE K.N.SREEDHARA SHENOY,
H.NO.19/1463 (OLD NO.19/1399) KASBA AMSOM DESOM,
KOZHIKODE TALUK, PIN-673 020.**
2. **S.VINOD, AGED 47 YEARS,
S/O.LATE K.N.SREEDHARA SHENOY,
H.NO.19/1463 (OLD NO.19/1399) KASABA AMSOM DESOM,
KOZHIKODE TALUK, PIN-673 020.**

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3. G.RATNA BHAI, AGED 6 YEARS,
W/O.LATE K.N.SREEDHARA SHENOY,
H.NO.19/1463 (OLD NO.19/1399),
KASABA AMSOM DESOM, PIN-673 020.
4. SURESH BHAT, AGED 52 YEARS,
S/O.VARADARAJA BHAT, KACHERI AMSOM DESOM,
KOZHIKODE THALUK, KOZHIKODE DISTRICT, PIN-673 011.
5. R.NARAYANAN BHAT, AGED 44 YEARS,
S/O.RAGHAVA BHAT, KACHERI AMSOM DESOM, KOZHIKODU THALUK,
KOZHIKODE DISTRICT, PIN-673 011.
6. LALITHA,
W/O.RAJAN, H.NO.7, RAJARAJESWARY NAGAR,
PONDICHERI, PIN-605 011.
7. GEETHA,
D/O.RAJAN, C/O.SREENIVASAN, NO.3,
PLAY GROUND VIEW STREET, NANDHANAM EXTENSION,
CHENNAI, PIN-600 035.
8. USHA, AGED 42 YEARS,
D/O.RAJAN, C/O.GUPTA NO.139, AUROBINDO STREET,
PONDICHERI, PIN-605 611.

R1 BY ADV. SRI.P.B.KRISHNAN [CAVEATOR]

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 03-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Msd.

B. KEMAL PASHA, J.

.....
C.R.P. No.435 of 2015
.....

Dated this the 3rd day of August, 2015

ORDER

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Petitioners herein are petitioners 2 to 6 before the court below in IA No.6846/2012 in IA No.5407/2005 in O.S. No.647/1995. It is an application filed under Order XXI Rule 99 CPC. They have claimed rights before the court below by styling themselves as persons claiming under one Balaji, who is allegedly a son of late Varadarajalu Chetty. O.S. No.647/1995 is a suit for specific performance of a contract and the same was decreed in favour of the plaintiff. Challenging the judgment and decree, an appeal was filed before this Court. This Court reversed the judgment. The defeated plaintiff challenged the judgment and decree passed by this Court, before the Supreme Court. There, the decree passed by this Court was reversed and the judgment and decree passed by the trial court was confirmed. A cost

of ₹1 lakh was also imposed on the defendants by the Supreme Court.

2. A suit for partition as O.S.No.18/1978 was filed by Raghava Bhat and Varadaraja Bhat in respect of the very same property claiming that they are entitled to the property obtained by them from Balaji, who is allegedly the son of late Varadarajalu Chetty. The suit was decreed. Challenging the judgment and decree in the partition suit, the matter was taken up before the District Court, Kozhikode through A.S.No.77/1982. In the appellate judgment, in paragraph 44, it was held as follows:-

“ In the light of my finding on point No.1, in as much as the plaintiffs have failed to prove that Balaji is the son of Varadarajalu Chetty, certainly Balaji takes no interest in the joint family property allotted under Exhibit B1 to 1st defendant and second defendant. Therefore, under Exhibits A1 and A2, no interest could have been passed by Balaji in favour of K.M.Muthu. Hence plaintiffs who are th

assignees from Muthu's heirs get no manner of right, title or interest over the property. Therefore, plaintiffs are not entitled to partition and separate possession of their so called share. This point is found against the respondents and in favour of appellants 1 and 2."

3. On the basis of the said finding entered by the appellate court, the appeal was allowed and the judgment and decree of the trial court in O.S.No.18/1978 were set aside. The matter was challenged before this Court in Second Appeal No.513/1986. The Second Appeal was also dismissed with the following observations:-

" According to the plaintiffs, second defendant had a son by name Balaji who was also a member of the joint family. Plaintiffs claimed to have purchased the rights of Balaji and filed the suit for partition. This right was disputed by the defendants. On the evidence, the trial court found that Balaji was a member of the family and therefore the plaintiffs are entitled to get partition of the rights obtained by

them from Balaji. In appeal, the first appellate court re-appraised the evidence and found that Balaji is not a member of the joint family and therefore the plaintiffs have no right to claim partition.”

The matter was taken up before the Supreme Court without any success.

4. It seems that the matter is now not open for any challenge at all. When specific findings as aforesaid are there to show that Balaji is not proved to be the son of Varadarajalu Chetty, the question is not open for challenge. Matters being so, the impugned order does not suffer from any illegality, irregularity or impropriety. Therefore, this C.R.P. is devoid of merits and is only to be dismissed, and I do so.

5. Finally, the learned counsel for the petitioners seeks for a breathing time for them to shift the jewellery being conducted in the property by them. In case of their filing an affidavit before the court below within 15 days from

today, by undertaking that they would unconditionally vacate the premises and handover the possession to the plaintiffs on or before 03.10.2015, such a request can be entertained by the court below. It is made clear that along with the petitioners, judgment debtors should also join in the affidavit.

In the result, C.R.P. is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/03/08

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PA to Judge