

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

FAO.No. 342 of 2012 ()

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AGAINST THE ORDER IN IA NO.840/2012 IN OS NO.9/2012 OF SUB COURT, KOYILANDY
DATED 3.10.2012.**

APPELLANTS/PETITIONERS/PLAINTIFFS:

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- 1. U.SATHYA AGED 62 YEARS
W/O. LATE BALAKRISHNAN, RESIDING AT 'BALAKRISHNA'
VIYYUR MUCHUKUNNU.P.O., KOYILANDY-673 307.**
 - 2. M.V. BAIJU AGED 39 YEARS
S/O. LATE BALAKRISHNAN, 'BALAKRISHNA'
VIYYUR MUCHUKUNNU.P.O., KOYILANDY-673 307.**
 - 3. M.V. SHAIJU AGED 36 YEARS
S/O. LATE BALAKRISHNAN 'BALAKRISHNA'
VIYYUR MUCHUKUNNU.P.O., KOYILANDY-673 307.**

**BY ADVS.SRI.BIJU ABRAHAM
SRI.B.G.BHASKAR**

**RESPONDENTS/RESPONDENTS 1 TO 3 & 4TH PLAINTIFF/
DEFENDANTS 1 TO 3 & 4TH PLAINTIFF:**

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- 1. K.SUKUMARAN, AGED 72 YEARS
S/O. CHATHAPPAN, RESIDING AT SHYAM NIVAS, VIYYUR AMSOM
MUCHUKUNNU.P.O, KOYILANDY-673 307.**
 - 2. M.V. MUKUNDAN, AGED 69 YEARS
S/O. CHATHAPPAN "SOUPARNIKA" CHERUSSERY ROAD
POST NUT STREET, VATAKARA.-673 104. (DIED)**
 - 3. M.V. SMITHA, AGED 34 YEARS
D/O. BALAKRISHNAN, 102, LAKE MONT ENCLAVE
THALAKAVERY LAY OUT, BASAVANNA NAGAR, VIBHUTHIPURA
BANGALORE-35.**

4. SURESH, AGED 52 YEARS
S/O. NARAYANAN "MANASA" IN VIYYUR AMSOM, POST KOLLAM OF
KOYILANDY-673 307 (HE IS MADE A RESPONDENT AS HE IS
UNWILLING TO JOIN AS AN APPELLANT)

***ADDL. RESPONDENTS 5 TO 7 IMPEADED:**

- R5. BHARGAVI, AGED 60, W/O.MUKUNDAN,
"SOUPARNIKA", CHERUSSERY ROAD,
NUT STREET, VATAKARA.-673 104.

- R6. JYOTHIR MOY, AGED 43, S/O. MUKUNDAN,
SAGAR, KALARIKKANDY PO., KOLLAM,
KOYILANDY - 673 307.

- R7. CHIN MOY, AGED 38, S/O. MUKUNDAN,
"SOUPARNIKA", CHERUSSERY ROAD,
NUT STREET, VATAKARA.-673 104.

*** ADDL. RESPONDENTS 5 TO 7 ARE IMPEADED AS LEGAL HEIRS OF THE
DECEASED R2 VIDE ORDER DATED 31.12.2012 IN IA NO.1757/2012.**

R1 BY ADV. SRI.P.V.KUNHIKRISHNAN

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

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F.A.O.No.342 of 2012

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Dated this the 19th day of March, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are plaintiffs 1 to 3 in O.S.No.9 of 2012 on the file of the Court of the Subordinate Judge of Koyilandy. The respondents are defendants 1 to 3 and the fourth plaintiff therein. The plaintiffs had along with the plaint filed I.A.No.840 of 2012 for the appointment of an Advocate-Receiver to administer and manage an upper primary school which also was the subject matter of the suit for partition. The defendants opposed the application by filing a counter affidavit. The trial court considered the rival contentions and dismissed I.A.No.840 of 2012 by order passed on 3.10.2012. The said order is under challenge in this appeal which was presented on 5.11.2012.

2. An year after the appeal was presented, the suit itself was tried and disposed of by judgment delivered on 28.11.2013. By that judgment, the suit for partition was decreed and a preliminary decree for partition was passed and that decree for partition is under challenge in R.F.A.No.125 of 2014 filed in this Court, by the

first defendant. In that appeal, plaintiffs 1 to 3 have filed I.A.No.450 of 2015 for the appointment of a Receiver to administer and manage the school. In such circumstances, as the suit itself has been disposed of and the decree passed by the trial court is under challenge in this Court in R.F.A.No.125 of 2014, we are of the considered opinion that no relief can be granted in the instant appeal.

The appeal is accordingly dismissed as infructuous, reserving liberty with the appellants to prosecute I.A.No.450 of 2015 in R.F.A.No.125 of 2014, wherein they have prayed for the appointment of a Receiver to administer and manage the school.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANIL K.NARENDRA
JUDGE**