

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Ex.SA.No. 17 of 2015

A.S.NO.17/2013 OF 1ST ADDITIONAL SUB COURT, ERNAKULAM

E.A.NO.362/2012 IN E.P.NO.262/2011 IN O.S.NO.78/1986 OF PRINCIPAL MUNSIF
COURT, ERNAKULAM

APPELLANT IN EX.SA./APPELLANT IN AS/CLAIM PETITIONER IN E.A/3RD PARTY
TO E.A & SUIT :

VINOD, S/O.LATE KALYANI, AGED 48,
MANATTIL, MEKKARA, LAKSHAMVEEDU, NADAMA,
TRIPUNITHURA- 682 301.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)

RESPONDENTS IN EX.S.A/RESPONDENTS IN A.S/RESPONDENTS IN E.A /DECREE
HOLDERS & JUDGMENT- DEBTORS IN SUIT :

1. P.N.RAMAKRISHNAN, S/O.NARAYANAN, AGED 56,
PAREPARAMBIL HOUSE, KARIKODU DESOM,
MULAMTHURUTHY VILLAGE, PIN- 682 314.
2. P.N.VELAPPAN, S/O.NARAYANAN, AGED 53,
PAREPARAMBIL HOUSE, KARIKODU DESOM,
MULAMTHURUTHY VILLAGE, PIN- 682 314.
3. VILASINI, W/O.LATE NARAYANANKUTTY, AGED 73,
VALLARI HOUSE, AMBALLOOR KARA,
AMBALLOOR VILLAGE, PIN- 682 315.
4. SANTHAKUMARI, D/O.LATE NARAYANANKUTTY, AGED 59,
VALLARI HOUSE, AMBALLOOR KARA,
AMBALLOOR VILLAGE, PIN- 682 315.
5. JAYAPRAKASAN, S/O.LATE NARAYANANKUTTY, AGED 47,
VALLARI HOUSE, AMBALLOOR KARA,
AMBALLOOR VILLAGE, PIN- 682 315.

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- 6. RAMESAN, S/O.LATE NARAYANANKUTTY, AGED 45,
VALLARI HOUSE, AMBALLOOR KARA,
AMBALLOOR VILLAGE, PIN- 682 315.**
- 7. USHA,
D/O.LATE NARAYANANKUTTY AND W/O.THAMARAKSHAN,
AGED 43, RESIDING AT PAZHAYIDATH HOUSE, VENNIKULAM,
THIRUVANIYUR VILLAGE, KOKKAPPILLY P.O., PIN- 682 305.**
- 8. V.N.ASHOKAN, S/O.LATE NARAYANANKUTTY, AGED 41,
VALLARI HOUSE, AMBALLOOR KARA,
AMBALLOOR VILLAGE, PIN- 682 315.**
- 9. PREETHA,
D/O.LATE NARAYANANKUTTY AND W/O.MOHAN BOSE,
AGED 39, THANKBLAYIL HOUSE, KUREEKADU,
KANAYANNUR TALUK, PIN- 682 305.**

**THIS EXECUTION SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

Ex.S.A.No.17 of 2015

Dated 18th September, 2015

J U D G M E N T

The petitioner in an application under Rule 97 of Order XXI of the Code of Civil Procedure ('the Code' for short) is challenging in this Second Appeal the concurrent decisions of the courts below on the said application.

2. Respondents 1 and 2 obtained a decree for partition of an item of property in O.S.No.78 of 1986 on the file of the Munsiff's Court, Ernakulam. According to the appellant, he is also entitled to a share in the suit property and the decree was obtained without him on the array of parties to the suit. It is alleged by the appellant that one Parameswaran who is similarly placed has already filed a suit as O.S.No.575 of 2012 to set aside the decree obtained by respondents 1 and 2 and the said suit is pending. According to the appellant, he came to know of the decree only when he received summons in O.S.No.575 of 2012.

3. The respondents 1 and 2 filed objection to the interlocutory application contending that the appellant has no

right in the suit property and that they have already obtained possession of their share in the suit property in execution of the decree obtained by them. They have also contended that the application filed by the appellant is not maintainable.

4. The execution court dismissed the application holding that the appellant has not made out any right over the suit property. In appeal, the appellate court found that an application under Rule 97 of Order XXI of the Code can be filed only by the decree holder or the auction purchaser who complains of obstruction in obtaining the suit property in execution of the decree and since the appellant is asserting independent right in the suit property, the application filed by him can be considered only as an application under Rule 99 of Order XXI of the Code. The appellate court then proceeded to consider the sustainability of the application under Rule 99 of Order XXI of the Code at the instance of the appellant and held that an application under the said provision cannot also be filed by the appellant as he has no case that he was in possession of the suit property and that he was dispossessed in execution of the decree obtained by respondents 1 and 2.

5. As rightly noticed by the appellate court, the appellant is not a decree holder nor an auction purchaser who complains of obstruction in obtaining the suit property in execution of the decree. As such, an application under Rule 97 of Order XXI of the Code at his instance is not maintainable. Likewise, the appellant has no case that he is dispossessed in execution of the decree obtained by respondents 1 and 2. As such, the application under Rule 99 of Order XXI is also not maintainable at his instance.

6. The Second Appeal, in the circumstances, is devoid of merit and the same is accordingly dismissed. However, it is made clear that the dismissal of this appeal will not preclude the appellant from instituting a fresh suit for partition of his rights, if any, in the suit property or working out his remedies in O.S.No.575 of 2012. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)