

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

FAO.No. 71 of 2015 ()

(AGAINST ORDER DATED 21.03.2015 IN I.A.NO.198 OF 2014 IN
O.S.NO.14 OF 2014 OF THE COURT OF SUBORDINATE JUDGE,
KASARAGOD)

APPELLANT(S)/PETITIONER/PLAINTIFF IN IA:

K.M.AHAMED NIZAR, AGED 40 YEARS,
S/O.LATE T.B.KUNHIMAHIN HAJI
RESIDING AT PADHOOR HOUSE, THEKKIL PO, CHATTANCHAL
KASARAGOD, NOW RESIDING AT FLAT NO.504
KRISHVI LAPALMA APARTMENT, 68/B, JOGHUPALAYA
MAIN ROAD, ULSOOR, BANGALORE-560 008,
KARNATAKA STATE.

BY ADVS.SRI.R.D.SHENOY (SR.)
SRI.LEGITH T.KOTTAKKAL
SRI.S.VINOD BHAT

RESPONDENT(S)/RESPONDENTS/DEFENDANTS IN IA:

1. SMT.S.L.KUNHIBI, AGED 65 YEARS
W/O.LATE T.B.KUNHI MAHIN HAJI, PADHOOR HOUSE
THEKKIL VILLAGE, THEKKIL PO, KASARAGOD
PIN-671 541.
2. SMT.THAHIRA ALI,
DAUGHTER OF LATE T.B.KUNHI MAHIN HAJI,
PADHOOR HOUSE
THEKKIL VILLAGE, THEKKIL PO, KASARAGOD
PIN-671 541.
3. MOHAMMED SHERIEF KUNHI MAHIN,
S/O.LATE T.B.KUNHI MAHIN HAJI, PADHOOR HOUSE
THEKKIL VILLAGE, THEKKIL PO, KASARAGOD
PIN-671 541.
4. KUNHIMAHIN MOIDHEEN KUNHI,
S/O.LATE T.B.KUNHI MAHIN HAJI, PADHOOR HOUSE
THEKKIL VILLAGE, THEKKIL PO, KASARAGOD
PIN-671 541.
5. SMT.ARIFA KUNHI MAHIN,
D/O.LATE T.B.KUNHI MAHIN HAJI, PADHOOR HOUSE
THEKKIL VILLAGE, THEKKIL PO, KASARAGOD
PIN-671 541.

6. BALAKRISHNA SHETTY,
S/O.SUBBANNA SHETTY, BELLUR HOUSE,
PTHUR VILLAGE
KASARAGOD-671 121.
7. DINESH K.,
RESIDING AT DEEKSHA NILAYA, NEAR PRESS CLUB
NEW BUS STAND, KASARAGOD-671 121.
8. ABDUL MAJEED,
S/O.MOHAMMED, HAZAN MANZIL
NEAR M.D.C. THALANGARA VILLAGE,
KASARAGOD-671 121.
9. P.M.MUHAMMED,
CHSTHIYA MANZIL, PARIGADI, MANGALPADY PO
KASARGOD-671 324.
10. ABDULLA K.A.,
IRSHAD NAGAR, B.M.D. FAZ HOUSE, KOPPA
MUTTATHODY PO, KASARAGOD, PIN-671 123.
11. AHAMMED SHAHZAD,
S/O.MUSTHAFA, KANDATHIL, ROSE HOUSE
UBAID ROAD, THERUVATH, THALANGARA VILLAGE
KASARAGOD, PIN-671 122.
12. N.S.PILLA,
S/O.NARAYANA PILLAI, KARTHIKA, KALANGOOR PO
PATHANAMTHITTA DISTRICT, PIN-689 694.
13. SULAIMAN NIZAR K.M.,
BAITHUL NOOR, NH 17, SANTHOSH NAGAR
CHENGALA POST, KASARAGOD, PIN-671 541.
14. SASIDHARAN,
DIVARADKA HOUSE, ADOOR VILLAGE, URDOOR P.O.,
KASARAGOD, PIN-671 543.
15. GOPALAKRISHNA K.,
S/O.SHANKAR, SRIDEVI NILAYAM,
NEAR GIRLS HOSTEL
ANANGOOR, KASARAGOD, PIN-671 121.
16. RAMESHA,
CHODALA HOUSE, MAYIPADY PO, KASARAGOD
PIN-671 124.
17. ABOOBACKER,
STICH POINT TAILORING SHOP, NEW BUS STAND
KASARGOD-671 121.
18. DR.SREERAJ E.R.,
S/O.E.RAGHAVAN NAIR
SHANDHIGIRI AYURVEDHA AND SIDDHA VAIDYA SHALAY
NEW BUS STAND, KASARAGOD-671 121.

19. RADHAKRISHNA,
PADHOOR SHOPPING COMPLEX, SWASTIK ENTERPRISE
KASARAGOD-671 121.
20. KASARAGOD TALUK PUBLIC SERVANT CO-OPERATIVE
SOCIETY LTD.NO.C.290,
REP. BY ITS SECRETARY, PADHOOR COMPLEX,
NEW BUS STAND
KASARAGOD-671 121.
21. HAMEED B.K.,
S/O.VADUVANKUNHI, ARAMANAYIL, ARIKADY PO
KUMBALA, KASARGOD-671 321.
22. LILLY VARGEES,
W/O.C.C.VARGEES, NELKALA ROAD, VIDYANAGAR
MUTTATHODY VILLAGE, KASARAGOD-671 123.
23. C.C.VARGEES,
NILAKALA ROAD, VIDYANAGAR, MUTTATHODY VILLAGE
KASARAGOD-671 123.
24. MUHAMED ASIF T.A.,
S/O.ABDUL RAZAK, KOLAMBAKKAL HOUSE, CHEMNAD
KASARAGOD-671 121.
25. SHAFI HAJI,
SYLVIYA FOOTWEAR, PADHOOR SHOPPING COMPLEX
NEW BUS STAND, KASARAGOD-671 121.
26. MOHAN NAIK,
S/O.BABU NAIK, MARAMPALLI HOUSE, R.D.NAGAR
KASARAGOD-671 125.
27. ARCHANA NAIK,
W/O.MOHAN NAIK, MARAMBALLI HOUSE, R.D.NAGAR
KASARAGOD-671 125.
28. AHAMED SHAFEEL P.A.,
UKKIRAPADY HOUSE, THEKKIL FERRY PO,
KASARAGOD-671 541.
29. C.M.SUBAIR,
NASAR COTTAGE, PANARKULAM, ALAMPADY PO
KASARAGOD-671 123.
30. A.K.ABDUL RAHMAN,
BAITHUL SHEBBAS, SREYA NAGAR, LIGHT HOUSE
KASARAGOD-671 121.
31. BASKARA ULIYA,
ULIYA HOUSE, MADHUR POST, KASARAGOD-671 124.
32. ABDULLA M.K.,
S/O.MUHAMMED, M.K.HOUSE, MANGAD POST
KASARAGOD-673 574.

33. NASSIR,
MUBARAK MANZIL, NULLIPADY, KASARAGOD-671 121.
34. MANJUNATH SHENOY,
SHENOI NIVAS COMPOUND ANANGOOR,
KASARAGOD-671 121.
35. YOUSUF P.K.,
S/O.PALLI KUNHI, KUNDARADKA HOUSE, KUMBALA
KOIPADY VILLAGE, KASARAGOD-671 121.
36. SADHASHIVA MALLYA,
LAKSHMI COMPOUND, AMEY ROAD,
KASARAGOD-671 121.
37. HANEEFA,
MALABAR DRESSES, PADHOOR SHOPPING COMPLEX
NEW BUS STAND, KASARAGOD-671 121.
38. MUSTHAFA THANGAL,
MALABAR DRESSES, PADHOOR SHOPPING COMPLEX
NEW BUS STAND, KASARAGOD-671 121.
39. ABDULRAHMAN,
K.M.HOUSE, CHENGALA PO, KASARAGOD-671 541.
40. M.T.MOOSA,
S/O.MUHAMMED, MADATHIL HOUSE, PATTAMBI
PALAKKAD DISTRICT, PIN-679 303.
41. ABDUL JABBAR M.T.,
S/O.MUHAMMED, MADATHIL HOUSE, PATTAMBI
PALAKKAD DISTRICT, PIN-679 303.
42. IBRAHIM KHALEEL,
DOLLARMAN, NEW BUS STAND, PADHOOR COMPLEX
KASARAGOD-671 121.
43. M.UMESHA,
S/O.ACHUTHA, PARAKATTA ROAD,
KASARAGOD-671 121.
44. SHANAVAS,
BLUE SKY, NEW BUS STAND, KASARAGOD-671 121.

R1-R5 BY ADV. SRI.K.JAYAKUMAR (SR.)

R1-R5 BY ADV. SRI.T.A.UNNIKRISHNAN (CAVEATOR)

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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FAO No.71 of 2015
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Dated this the 8th day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1.This is an unfortunate litigation between the legal representatives of late T.B.Kunhi Mahin Haji. He left behind the first defendant, his widow, and plaintiff and defendants 2 to 5, his children. The mother and the other children appeared to be living in Kasaragod District in Kerala, while the plaintiff lives in Bangalore. The plaintiff sued claiming that he is entitled to 14 upon 64 shares in the plaint schedule property. Parties are stated to be those who follow Hanafi Law.

2.We have heard the learned senior counsel appearing for the appellant and learned senior counsel appearing for the contesting respondents.

The crux of the issues in this appeal is regarding the refusal of

the court below to issue a direction to the contesting defendants to deposit the earnings generated from the buildings by way of rent from tenants. Following order dated 07.04.2015 issued in this appeal, an affidavit has been placed on record which discloses the monthly rent being collected by the first defendant as ₹5,89,067/-. The first defendant is the plaintiff's mother. Keeping aside the different contentions and also reckoning the allowance towards expenditure, running cost of the building, etc., we think that it will be just and reasonable to order that an amount of ₹1,00,000/- (Rupees one lakh only) per month has to be deposited before the court below by the first defendant in the form of fixed deposit receipts drawn in the name of the first defendant with lien marked in favour of the court below with effect from June, 2015, and we do so. The appellant volunteers that he is not interested in collecting such amount during the pendency of the litigation. We record it and direct that the appellant will not make any request for withdrawal of such amount. This is on the further assumption that this litigation

ought to make an end by way of settlement through mediation or following adjudication, without delay. The impugned order is modified and the first respondent is directed to comply with the aforesaid order regarding the amounts by way of fixed deposit receipts. The court below will ensure that the fixed deposit receipts are appropriately maintained with effect from June, 2015 with lien marked in terms of this judgment. The court below will also make an endeavour to expeditiously consider whether the case could be referred for mediation with consent of parties or otherwise, to have it listed for adjudication and disposal, without delay. It is further directed that none of the observations made in this judgment and in the order impugned herein will bind the parties at final trial. This appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)