

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

FAO.No. 11 of 2011 ()

AGAINST THE ORDER/JUDGMENT IN I.A.942/2009 IN R.R.82 IN OS
26/1965 of SUB COURT, OTTAPPALAM DATED 17-09-2010

APPELLANT: [NINENTH RESPONDENT]:

VALSALA AMMA, AMBAL NIVAS,
WEST FORT ROAD, PALAKKAD.

BY ADV. SRI.R.RAJESH KORMATH

RESPONDENT(S)/PETITIONERS & R3-8,10-15,19-42,45-53,55-59,
62-69:

1. KAVALAPPARAKOTTARATHIL SATHYANATHANUNNI
NAIR, 'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.

2. GOURI NETHYAR, 'KAVALAPPARA KOTTARAM',
OTTAPPALAM.P.O., OTTAPPALAM TALUK, PALAKKAD DISTRICT
PIN-679 101.

3. RAJENDRANUNNI NAIR,
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.

4. PRATHAPANUNNI NAIR,
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.

5. INDIRA,
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.

6. RAMANI,
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.

7. PRAKASH KUMAR,
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.
- # 8. VIJAYAM NETHYAR, (DELETED)
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.
9. SARALA NETHYAR,
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.
10. RAVEENDRANUNNI,
'KAVALAPPARA KOTTARAM', OTTAPPALAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 101.
- # 11. RUGMINI ALIAS SUBHADRAMMA, (DELETED)
SURABHI, ELAMAKKARA (P.O), PUTHUKKALAVATTOM
KOCHI, PIN-682 026.
- # 12. VRINDAKUNCHI AMMA, (DELETED)
CENTRE FORT, 6A, CHITTOOR ROAD.P.O.
ERNAKULAM, KOCHI-11.
- # 13. RAJEEV (MINOR), (DELETED)
CENTRE FORT, 6A, CHITTOOR ROAD.P.O.
ERNAKULAM, KOCHI-11.
REPRESENTED BY GUARDIAN 12TH RESPONDENT.
- # 14. RAJENDRAKUMAR (MINOR), (DELETED)
CENTRE FORT, 6A, CHITTOOR ROAD.P.O.
ERNAKULAM, KOCHI-11.
REPRESENTED BY GUARDIAN 12TH RESPONDENT.
- * 15. KHADEEJA, (DELETED)
AMBALAVAYALIL, NALLALAM.P.O., KOZHIKODE
PIN-673 027.
- * 16. ABOOBACKER, (DELETED)
AMBALAVAYALIL, NALLALAM.P.O., KOZHIKODE
PIN-673 027.
- # 17. THANKAMANI CHERIYAMMA, (DELETED)
CHONATH VEEDU, NALLEPPULLI.P.O., CHITTUR TALUK
PALAKKAD DISTRICT, PIN-678 553.

18. VIJAYAKUMARI,
'ANSSA', PADIVATTOM ROAD, KOCHI-682 024.
19. BALACHANDRAN,
BANK LANE, OTTAPPALAM.P.O., PALAKKAD DISTRICT
PIN-679 101.
20. CHITHARANJAN DAS,
'MARUTHUR HOUSE', VADAVANNUR (P.O.), CHITTUR TALUK
PALAKKAD DISTRICT, PIN-678 504.
21. DAMODARANUNNI, BANK LANE,
OTTAPPALAM.P.O., PALAKKAD DISTRICT, PIN-679 101.
22. SURENDRANATHAN, BANK LANE,
OTTAPPALAM.P.O., PALAKKAD DISTRICT, PIN-679 101.
- # 23. T.GOPIKA, BANK LANE, (DELETED)
OTTAPPALAM.P.O., PALAKKAD DISTRICT, PIN-679 101.
24. SUBHA MENON, 6TH AVENUE,
ANNA NAGAR.P.O., CHENNAI, PIN-600 040.
25. V.VIJAYAN, 6TH AVENUE,
ANNA NAGAR.P.O., CHENNAI, PIN-600 040.
26. GEETHA RAMACHANDRAN, 6TH AVENUE,
ANNA NAGAR.P.O., CHENNAI, PIN-600 040.
- # 27. SARALA G.MENON, 6TH AVENUE, (DELETED)
ANNA NAGAR.P.O., CHENNAI, PIN-600 040.
28. MANORAMA VIJAYAN, 'SIVASAKTHI,
KUNNATHUR MEDU.P.O., PALAKKAD DISTRICT, PIN-678 013.
- # 29. JANAKI AMMA, THAYYUR HOUSE, (DELETED)
PERINGAVU.P.O., THRISSUR-18.
30. RADHA GOPALAKRISHNAN,
'VRINDAVANAM', ATHANI (P.O), NEDUMBASSERY AMSOM
ALUVA TLUK, KOCHI-683 585.
- # 31. RAMESH (MINOR), (DELETED)
THAYYUR HOUSE, PERINGAVU.P.O., THRISSUR-18
REPRESENTED BY GUARDIAN 29TH RESPONDENT.

- # 32. BHASKARAN (MINOR) , (DELETED)
THAYYUR HOUSE, PERINGAVU.P.O., THRISSUR-18
REPRESENTED BY GUARDIAN 29TH RESPONDENT.

- # 33. RAKESH (MINOR) , (DELETED)
THAYYUR HOUSE, PERINGAVU.P.O., THRISSUR-18
REPRESENTED BY GUARDIAN 29TH RESPONDENT.

- * 34. RAVUNNIKUTTY, (DELETED)
ARADHANA, PULASSERY AMSOM, OTTAPALAM.P.O.
PALAKKAD DISTRICT, PIN-679 101.

- * 35. UNNIYAN HAJI, (DELETED)
PARAYARUKUNDIL, VALLAPPUZHA.P.O., OTTAPALAM TALUK
PALAKKAD DISTRICT, PIN-679 503.

- * 36. ASSAINAR, (DELETED)
PARAYARUKUNDIL, VALLAPPUZHA.P.O., OTTAPALAM TALUK
PALAKKAD DISTRICT, PIN-679 503.

- * 37. JACOB ELIAS, (DELETED)
'PARAPPATHUKUZHIIYIL, KILLIMANGALAM.P.O.
TALAPPILLY TALUK, THRISSUR DISTRICT, PIN-680591.

- * 38. ANITHA THOMAS, (DELETED)
KAVUNGAL.P.O., SHORNUR VILLAGE, OTTAPPALAM TALUK
PALAKKAD DISTRICT, PIN-679121.

- * 39. ANNAMMA MATHEW, (DELETED)
KAVUNGAL.P.O., MUNDAMUKKU AMSOM
OTTAPPALAM TALUK
PALAKKAD DISTRICT, PIN-679121.

- * 40. P.V.SUGATHAN, (DELETED)
KADAVALLUR.P.O., KORATTIKKARA DESOM, TALAPPILLY TALUK
THRISSUR DISTRICT, PIN-680543.

- * 41. P.V.SURESH, (DELETED)
PONNARASSERI, KADAVALLUR.P.O., KORATTIKKARA DESOM
THRISSUR DISTRICT, PIN-680 543.

- * 42. K.BHAVANI, (DELETED)
PONNARASSERI, KADAVALLUR.P.O., KORATTIKKARA DESOM
THRISSUR DISTRICT, PIN-680 543.

- * 43. P.V.SATHYAN, (DELETED)
PONNARASSERI, KADAVALLUR.P.O., KORATTIKKARA DESOM
THRISSUR DISTRICT, PIN-680 543.

- * 44. MOHANAN, (DELETED)
KADAVALLUR.P.O., KARIPPAKKUNNU DESOM
THRISSUR DISTRICT, PIN-680 543.
- * 45. ABOOBACKER, (DELETED)
PUTHEN VEETIL, AYYANTHOLE VILLAGE, CIVIL STATION.P.O.
THRISSUR DISTRICT, PIN-680003.
- * 46. SINDHU, WIFE OF KALLADA SURESHKUMAR, (DELETED)
MANAVALASSERI VILLAGE, THANNISSERI.P.O.
MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN-680 701.
- * 47. ANITHA ROY, THRIPPUNITHURA.P.O., (DELETED)
ERNAKULAM DISTRICT, PIN-682 301.
- * 48. A.J.RAICHAL, (DELETED)
WIFE OF KALATHIKKAD ROY KURIAN, THRIPPUNITHURA.P.O.
ERNAKULAM DISTRICT, PIN-682 301.
- * 49. V.K.JOSEPH, SON OF KURIACKOSE, (DELETED)
PARAPPATHU KUZHIYIL, KARUMALAPPILLI VILLAGE
TALAPPILLI TALUK, THRISSUR DISTRICT, PIN-680001.
- * 50. V.K.MONEY, DAUGHTER OF KURIACKOSE, (DELETED)
PARAPPATHU KUZHIYIL, KARUMALAPPILLI VILLAGE
TALAPPILLI TALUK, THRISSUR DISTRICT, PIN-680001.
- * 51. SAJEEV KUMAR, (DELETED)
SON OF KALLADA RAMAKRISHNAN, MANAVALASSERI VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN-680701.
- * 52. SANTHOSH KUMAR, (DELETED)
SON OF KALLADA RAMAKRISHNAN, MANAVALASSERI VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN-680701.
- * 53. SURESHKUMAR, (DELETED)
SON OF KALLADA RAMAKRISHNAN, THANNISSERI P O
MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN-680701.
- * 54. KUNHIMOITHEEN HAJI, (DELETED)
PALASSERI PUTHEN PEEDIYEKKAL, VALLAPUZHA.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679503.
- * 55. HAMSA, (DELETED)
THADATHIL HOUSE, KULAPPULLI, SHORNUR.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 122.

* 56. ALI ALIAS MUTHU HAJI, (DELETED)
PARAYARAKUNDIL HOUSE, VALLAPUZHA.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679 503.

* 57. MAMMI HAJI, (DELETED)
SON OF KUNNATHU MOIDEENKUTTY, VANIYAMKULAM.P.O.
OTTAPPALAM TALUK, PALAKKAD DISTRICT, PIN-679522.

* 58. P.R.SUSHILKUMAR, (DELETED)
PANNANCHERI VILLGE, KARIPPAKKUNNU DESOM
KADAVALLUR.P.O., THRISSUR DISTRICT, PIN-680543.

59. SUSHAMA JAYAN,
ANANDALAYAM, THRIIPPUNITHURA.P.O., KOCHI
PIN-682 301.

60. BINDU PRAKASH,
MANGAL NAGAR 5, ARUMBAKKAM.P.O., CHENNAI-600106.

61. MOHANDAS,
176E, 3RD FLOOR, JANAKI APARTMENTS
RAMALINGAM ROAD, COIMBATORE.P.O., PIN-641 011.

62. MANOHARAN,
176E, 3RD FLOOR, JANAKI APARTMENTS
RAMALINGAM ROAD, COIMBATORE.P.O., PIN-641 011.

63. VALSALA MANNADIYAR,
WIFE OF LATE RAMACHANDRANUNNI MANNADIAR, LEELALAYAM
CHERPULASSERI.P.O., OTTAPPALAM TALUK
PALAKKAD DISTRICT, PIN-679 503.

64. SARATHCHANDRAN,
SON OF LATE RAMACHANDRANUNNI MANNADIAR, LEELALAYAM
CHERPULASSERI.P.O., OTTAPPALAM TALUK
PALAKKAD DISTRICT, PIN-679 503.

(RESPONDENTS NUMBERS 50 AND 51 AND 60 AND 61 SHOWN RESPECTIVELY,
IN THE CAUSE TITLE OF IMPUGNED ORDER ARE ONE AND THE SAME).

(# - R8,R11 TO 14, R17, R23, R27, R29 AND R31 TO 33 ARE DELETED
FROM PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED
08.03.2012 IN I.A.NO.498/2012)

(* - R15, 16 AND 34 TO 58 ARE DELETED FROM PARTY ARRAY AT THE
RISK OF the APPELLANT AS PER ORDER DATED 13.01.2011 IN
I.A.NO.139/11)

R,R1,2, 4 TO 6 & R9 BY ADV. SRI.N.K.SUBRAMANIAN

R,R1,2, 4 TO 6 & R9 BY ADV. SRI.S.ANANTHAKRISHNAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.11 of 2011
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Dated this the 26th day of May, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order during the course of final decree proceedings in a suit for partition. The subject matter of this appeal is around 10 cents and a building thereon. Now, read the order dated 16.02.2011 confining stay granted in this case only as regards that extent and permitting other proceedings to continue.

2. The short issue that arises for decision is as to whether the court below was justified in ordering public auction by reviewing an earlier order for auction among sharers. Hearing the learned counsel on both sides, we see that the fundamental dispute is as to whether it would be a public auction or private auction that would be feasible in the best interest of all the sharers to generate the highest possible benefit for the sharers. Keeping aside all the technicalities, learned counsel for the parties have agreed to the suggestion of the Bench that the trial court can be required to fix a realistic fair value as the upset price for the land and building after hearing all the sides and to put the property to auction, in the first instance, as between the sharers. If that does not fructify, the court will proceed for public

auction. The auction among sharers shall be in open court.

Under the aforesaid circumstances, this appeal is ordered setting aside the impugned order and directing that the court below shall fix the upset price for the property in question to enable the said property to be put in auction. Such upset price shall be fixed having regard to all relevant and attendant facts and circumstances so that the upset price so fixed will be realistic. Thereupon, the court below will proceed to first list the case for an auction among sharers, having regard to such upset price. If that is not materialized, court below will be at liberty to put the property in public auction and have the sale conducted, having regard to the upset price that would be already fixed by the court below in the light of what is aforesaid.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

Sbna