

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

FAO.No. 140 of 2011 ()

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AGAINST THE JUDGMENT IN AS. NO.29/2007 OF SUB COURT, THIRUVALLA
DATED 30-09-2010**

**AGAINST THE JUDGMENT IN OS. NO.744/2002 OF MUNSIF COURT, THIRUVALLA
DATED 12-03-2007.**

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**APPELLANTS/1ST AND 2ND RESPONDENTS/1ST DEFENDANT
AND 2ND DEFENDANT:**

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1. S. RAVEENDRAN, AGED 57 YEARS,
S/O.SOMASEKHARAN, IDUVINAMPOIKAYIL VEETIL,
EZHUMATTOOR P.O., EZHUMATTOOR MURI AND
VILLAGE, MALLAPPALLY.**

**2. RAJAMMA, AGED 63 YEARS,
W/O.KUNJUPILLAI, MALIYEKAL VEETIL,
EZHUMATTOOR P.O., EZHUMATTOOR MURI AND
VILLAGE, MALLAPPALLY.**

**BY ADVS.SRI.P.HARIDAS,
SMT.S.SIKKY.**

RESPONDENTS/APPELLANTS/2ND PLAINTIFF/ADDL. PLAINTIFFS 3, 4, 5, 6, 7, 8 & 9:

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1. K.A.ABBAS, AGED 59 YEARS,
S/O.ABDUL RAHMAN, MUTHUPALACKAL VEETIL,
EZHUMATTOOR P.O., EZHUMATTOOR MURI AND VILLAGE,
PIN-689 586, FROM VAIPUR PLANTHOTTATHIL,
CHERUTHOTTUVAZHI MURIYIL, VAIPUR P.O.,
KOTTANGAL VILLAGE, MALAPPALLY TALUK, PIN-689 588.**

**2. KUNJAMMA BEEVI, VAIPUR PLANTHOTTATHIL,
CHERUTHOTTUVAZHI MURIYIL, VAIPUR P.O.,
KOTTANGAL VILLAGE, MALAPPALLY TALUK, PIN-689 588.**

**3. PATHUMMA BEEVI, D/O.KUNJAMMA BEEVI,
VAIPUR PLANTHOTTATHIL, CHERUTHOTTUVAZHI MURIYIL,
KOTTANGAL VILLAGE, MALAPPALLY TALUK, PIN-689 588.**

4. ANSUMA BEEVI, D/O.KUNJAMMA BEEVI,
VAIPUR PLANTHOTTATHIL, CHERUTHOTTUVAZHI MURIYIL,
KOTTANGAL VILLAGE, MALAPPALLY TALUK, PIN-689 588.
5. NAZEEMA BEEVI, D/O.KUNJAMMA BEEVI,
VAIPUR PLANTHOTTATHIL, CHERUTHOTTUVAZHI MURIYIL,
KOTTANGAL VILLAGE, MALAPPALLY TALUK, PIN-689 588.
6. AZIYA BEEVI, D/O.KUNJAMMA BEEVI,
VAIPUR PLANTHOTTATHIL, CHERUTHOTTUVAZHI MURIYIL,
KOTTANGAL VILLAGE, MALAPPALLY TALUK, PIN-689 588.
7. SUBAIDA BEEVI, AGED 48 YEARS,
W/O.ANSARI, VEKANIL VEETIL,
VAIPUR MURI, KOTTANGAL VILLAGE,
MALAPPALLY TALUK, PIN-689 588.
8. SUBIR, AGED 38 YEARS,
S/O.ABDUL RAHMAN RAWTHAR,
PLANTHOTTATHIL VEETIL, VAIPUR MURI,
KOTTANGAL VILLAGE, MALAPPALLY TALUK, PIN-689 588.

R1 TO R6 & R8 BY ADV. SRI.R.UMASANKAR.
R7 BY ADVS. SRI.R.HARIKRISHNAN,
SRI.E.RAMACHANDRAN,
SRI.K.SUDHINKUMAR,
SMT.JASMY KOTTOOR.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

FA.O.No.140 OF 2011

Dated this the 24th day of March, 2015

JUDGMENT

The decision of the court of the Subordinate Judge, Thiruvalla in A.S.29 of 2007 by which O.S.744 of 2002 on the file of the court of the Munsiff, Thiruvalla is remitted for fresh disposal, is under challenge in this appeal. The appellants are defendants 1 and 2 in the suit.

2. O.S.744/02 is a suit for declaration of title. The case of the plaintiffs is that the plaint schedule property was obtained by the first plaintiff as per Ext.A1 sale deed of the year 1958 and the same is in possession of the second plaintiff. According to the plaintiffs, the defendants 1 and 2 are claiming right over the plaint schedule property based on certain documents created by them.

3. The first defendant contested the suit contending inter alia that there is no property in existence as shown in Ext.A1 sale deed; that the description of the plaint schedule property is incorrect and that the plaint schedule property is a property obtained by him by

virtue of Exts.B1 and B2 documents.

4. The trial court dismissed the suit holding that the plaintiffs have not established the identity of the plaint schedule property. The plaintiffs challenged the decision of the trial court in appeal. The appellate court remitted the suit for fresh disposal, after affording the plaintiffs an opportunity to establish the identity of the plaint schedule property. Defendants 1 and 2 are aggrieved by the said decision of the appellate court and hence the appeal.

5. Heard learned counsel for the appellants and also the learned counsel for the respondents.

6. It is seen that when the appeal was taken up for hearing, the only submission made on behalf of the plaintiffs was for an opportunity to establish the identity of the plaint schedule property. In so far as the plaintiffs failed to establish that the plaint schedule property is the property covered by Ext.A1 sale deed, the appellate court felt it appropriate to afford the plaintiffs an opportunity to establish the identity of the plaint schedule property. It is in the said circumstances, the appellate court remitted the suit for fresh disposal. I find no infirmity in the decision of the appellate court. The appeal is without

merits and the same is, accordingly, dismissed. Since the suit is of the year 2002, I deem it appropriate to direct the trial court to dispose of the suit, as expeditiously as possible, at any rate, on or before 30.6.2015.

P.B.SURESH KUMAR, JUDGE

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