

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

FAO.No. 296 of 2011 ()

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AGAINST THE ORDER/JUDGMENT IN I.A.NO.2330 OF 2011 IN OS NO 343 OF 2011
OF IST ADDL.SUB COURT, KOZHIKODE DATED 23.7.2011**

APPELLANT/RESPONDENTS 1,2 AND 3/DEFENDANTS:

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- 1. IKKACHI, AGED 80 YEARS,
W/O. LATE KARIYATHAN, THADAPARAMBIL, KUTTIKATTOOR.P.O.,
KUTTIKATTOOR AMSOM DESOM, KOZHIKODE TALUK,
KOZHIKODE-673 008.**
 - 2. T.P. BHASKARAN, AGED 60 YEARS,
S/O. LATE KARIYATHAN, "NEETHUBHAVAN", POOVATTUPARAMBA,
PERUMANNA AMSOM DESOM, PERUMANNA.P.O.
KOZHIKODE-673 026.**
 - 3. RADHAKRISHNAN, AGED 46 YEARS,
S/O. LATE KARIYATHAN, THADAPARAMBIL, KUTTIKATTOOR.P.O.
KUTTIKATTOOR AMSOM DESOM, ', KOZHIKODE TALUK-673 008.**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/PETITIONER/PLAINTIFFS:

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USHAKUMARI, AGED 39 YEARS,
W/O. SUKUMARAN.M. PALAKUZHI PARAMBA QUARTERS,
NEAR KUTTIKATTOR HIGH SCHOOL, KUTTIKATTOOR.P.O.,
KUTTIKATTOR AMSOM DESOM, KOZHIKODE TALUK-673 001.**

R BY ADV. SRI.MANJERI SUNDERRAJ

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DG

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

F.A.O.No.296 of 2011

Dated this the 30th day of June, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard.

2. This appeal was filed in 2011 against an order of temporary injunction granted on 23.7.2011, restraining alienation and encumbering any part of the suit property of which partition is sought for. The appellant contested the plaint claim and pleaded that the plaintiff is entitled to one sixth shares. He also pleaded that he has obtained the plan and licence to construct the building and, therefore, the order of temporary injunction as sought for by the plaintiff may not be granted. The court below granted temporary injunction on 23.7.2011, as already noted. Though this appeal was admitted on 13.10.2011, the impugned order of temporary injunction is kept intact since there is no interdicting order by this Court for

the last four years. With the passage of time, we do not find any ground to interfere with the impugned order at this time.

3. Be that as it may, we are also of the view that the plaintiff, having established the right to share in the suit property is entitled to insist that no alienation or encumbrance shall be created in relation to the suit property. It is so decided. We say this more particularly because, even the appellant is entitled to a share, according to him, a smaller one.

For the aforesaid reasons, this appeal is dismissed.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

//TRUE COPY//

P.A TO JUDGE

DG