

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. 124 of 2014 ()

**(AGAINST THE ORDER IN I.A.NO.9753 OF 2013 IN O.S.NO.557 OF 2013 DATED 7.2.2014
PASSED BY THE PRINCIPAL SUB COURT, THRISSUR)**

APPELLANTS/PLAINTIFF:

- 1. GOPINATHAN, AGED 50 YEARS,
S/O KIZHICHERIL KRISHNAN KUTTY NAIR AND RADAMMA,
PURANATTUKARA VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.**
- 2. RADAMMA, AGED 71 YEARS,
W/O KRISHNANKUTTY NAIR, KIZHICHERI HOUSE,
PURANATTUKARA VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.R.ARUN KRISHNAN**

RESPONDENTS/DEFENDANTS:

- 1. PREMKUMAR, AGED 47 YEARS,
S/O KRISHNANKUTTY NAIR, KIZHICHERI HOUSE,
PURANATTUKA VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT-680 001.**
- 2. SATHYAN, AGED 44 YEARS,
S/O KRISHNANKUTTY NAIR, KIZHICHERI HOUSE,
PURANATTUKA VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT-680 001.**
- 3. VISALAKSHI,
S/O KRISHNANKUTTY NAIR, KIZHICHERI HOUSE,
PURANATTUKA VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT-680 001.**

**R1 BY ADV. SRI.P.SANTHOSH (PODUVAL)
R1 BY ADV. SMT.R.RAJITHA
R1 BY ADV. SRI.K.D.SREEVISAKH**

**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.124 of 2014

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 is by the 1st plaintiff who is appointed as receiver in a suit for partition. The appointment of the receiver is not challenged as such. What is in dispute is as to whether the 1st plaintiff ought to have been directed to deposit an amount of Rs.4,500/- per month till disposal of the suit. The plaint schedule buildings include a shop room which houses a vegetable store. Taking the probable profits arising out of the business or the rental value of that business, the court below has fixed the amount at Rs.4,500/- and directed the 1st plaintiff to remit it. Though technically, it is said that there is no specific material to fix the amount at Rs.4,500/-, we think that on an average, that cannot be treated as an arbitrary fixation by the court below. The business is being run by the 1st plaintiff. While he propounded a Will of his father, the defendants propounded another Will which is a later one. It is also submitted that the father, who is now no more, had obtained a decree against 1st

plaintiff. We do not see that the court below has acted in excess of jurisdiction under Order XLI Rule 1 of the Code of Civil Procedure when it fixed the amount that the 1st plaintiff had to pay. We adopt this approach because, we think that the 1st plaintiff does not have any plea that any one of the defendants should be made the receiver. The impugned order does not require to be interfered with. This appeal, therefore, fails.

In the result, this appeal is dismissed.

Sd/-
THOTTATHIL B. RADHAKRISHNAN , JUDGE

Sd/-
SUNIL THOMAS, JUDGE

//TRUE COPY//

P.A TO JUDGE

DG