

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

FAO.No. 195 of 2014 ()

(ORDER DTD.30.5.2014 IN IA.944/14 IN OS.59/14 OF SUB COURT, CHAVAKKAD)

APPELLANT(S)/COUNTER PETITIONERS 1 AND 2:

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1. R.V.MOHAMMED, AGED ABOUT 62 YEARS
S/O.SAIDALI, 'SHERIFF MAHAL', THAIKKAD P.O
GURUVAYUR.
 2. RAZIYA MOHAMMED, AGED 53 YEARS
W/O.R.V MOHAMMED, 'SHERIFF MAHAL', THAIKKAD P.O
GURUVAYUR.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.S.SREEDEV

RESPONDENT(S)/COUNTER PETITIONERS 3 TO 8:

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1. RABIYA MOHAMMED, AGED 27 YEARS
W/O.AMJAD GAFOOR, DIYA KOTTATHARA, MORARJI ROAD
VAZHAKKALA, KOCHI 682 030
 2. REHANA MOHAMMED, AGED ABOUT 38 YEARS
W/O.ABDUL GAFOOR, PUTHAN PURAYIL, JARAM ROAD
GURUVAYOOR. 680663.
 3. RESHMA MOHAMMED, , AGED ABOUT 34 YEARS, D/O.R.V MOHAMMED,
'SHERIFF MAHAL',THAIKKAD P.O,GURUVAYUR 680663.
 4. RAJNA MOHAMMED, AGED ABOUT 30 YEARS
W/O.ASHI K.K, KADAMBOT HOUSE, ERIYAD P.O
KODUNGALLUR, THRISSUR 680 666.
 5. AHAMMED SHERIF, AGED ABOUT 23 YEARS
S/O.R.V MOHAMMED, 'SHERIFF MAHAL', THAIKKAD P.O
GURUVAYUR 680663.
 6. V.A MOIDUNI, S/O.ABOOBACKER, PAYOOR VALAPPIL,
KADAVALLUR VILLAGE, TALAPALLY TALUK 680664.
 7. THE CHIEF MANAGER,
FEDERAL BANK, SAMC(KOZHIKODE ZONE), 380/6/IX
T.B ROAD, S.T.NAGAR, THRISSUR 680001

R1 BY ADV. SRI.S.EASWARAN
R1 BY ADV. SRI.S.A.ANAND
R1 BY ADV. SRI.VARUGHESE CHERIAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.195 of 2014

Dated this the 17th day of November, 2015

JUDGMENT

Antony Dominic, J.

- 1.This appeal is filed by defendants 1 and 2 in O.S.59/14 on the file of the sub court, Chavakkad challenging the order passed in I.A.944/14. The said IA was filed by the first respondent plaintiff in the suit under Order XXXIX Rules 1 and 2 and by the impugned order, the appellants were restrained from alienating the fractional right of the first respondent over the plaint schedule properties to the third parties and were also restrained from committing acts of waste till the disposal of the suit. Aggrieved by this order, this appeal is filed.
2. Heard learned senior counsel for the appellants and the learned counsel appearing for the first respondent.
- 3.Having considered the submissions made, what we find is that the prayer in the suit is for partition of the plaint schedule properties and by the impugned order, the court has restrained the appellants from

alienating the fractional right of the first respondent plaintiff and also from committing acts of waste in the plaint scheduled properties. Although various contentions were raised at the Bar by the counsel for the appellants, which, in substance, is to the effect that the first respondent does not have any partible interest in the property, since the suit is pending, we do not think it proper for this Court to pronounce on those contentions. That apart, we are told that the suit has already been listed for trial to 1.12.2015. Taking note of the aforesaid factual situation, we decline to interfere with the impugned order.

Accordingly, we dispose of this appeal without upsetting the order passed by the trial court and clarifying that the suit will be decided in accordance with law and untrammelled by any observations made in the impugned order.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge