

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

FAO.No. 265 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN I.A.NO.6758 OF 2012 IN OS
202/2012 of III ADDL.SUB COURT, KOZHIKODE DATED 07-08-2014

APPELLANT(S)/RESPONDENTS/DEFENDANTS 10 TO 12, 14 AND 15:

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1. CHENNAMKULATH ANNAKUTTY, AGED 70 YEARS
D/O.DEVASIA, THIRUVAMBADI AMSOM DESOM
KOZHIKODE THALUK, KOZHIKODE DISTRICT-673 603.
 2. C.D.MARY,
CHENNAMKULATH, THIRUVAMBADI AMSOM DESOM
KOZHIKODE THALUK, KOZHIKODE DISTRICT-673603.
 3. C.D. JOSEPH,
CHENNAMKULATH, THIRUVAMBADI AMSOM DESOM
KOZHIKODE THALUK, KOZHIKODE DISTRICT-673 603.
 4. C.D. ANNAKUTTY,
CHENNAMKULATH, THIRUVAMBADI AMSOM DESOM
KOZHIKODE THALUK.
 5. C.D.TESSY,
CHENNAMKULATH, THIRUVAMBADI AMSOM DESOM
KOZHIKODE THALUK, KOZHIKODE DISTRICT-673 603.

BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI

RESPONDENT(S)/PETITIONERS/PLAINTIFFS/DEFENDANTS 1 TO 9 AND
13.:

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1. C.P. MARY, AGED 62 YEARS
D/O.VALARIYIL PAILY, PADICHIRA VILLAGE
SULTHAN BATHERI THALUK, WAYANAD DISTRICT.
 2. VALATTU THODIYIL VEETIL C.P.ELIKKUTY,
AGED 60 YEARS
PADICHIRA VILLAGE, SULTHAN BATHERI THALUK.

3. ERANHAKULATHIL VEETIL C.P.LEELAMMA,,
AGED 60 YEARS
D/O.PAILY, PADICHIRA VILLAGE,
SULTHAN BATHERI THALUK.
4. PACHADIYIL VEETIL C.P.VALSAMMA BABU,,
AGED 60 YEARS
D/O.PAILY, AMBALAVAYAL VILLAGE,
SULTHAN BATHERI THALUK.
5. CHERUMKULATHIL VEETIL C.P.KURIAKOSE,,
AGED 49 YEARS
S/O.PAILY, PADICHIRA VILLAGE,
SULTHAN BATHERI THALUK.
6. C.P.JOY,
S/O.PAILY, A 334, CHARTHALUR
L.X.FACE, GALY NO.7 NEW DELHI-110074.
7. C.U.THANKACHAN @ JOSEPH, AGED 47 YEARS,
S/O.ULAHANNAN, CHENUMKULATH HOUSE
KODIYATHUR AMSOM, PANNIKODU DESOM,
KOZHIKODE TALUK.
8. C.U.MARTIN,
S/O.ULAHANNAN, CHENUMKULATH HOUSE
KODIYATHUR AMSOM PANNIKODU AMSOM,
KOZHIKODU TALUK.
9. C.U.MARY, AGED 62 YEARS
KUNNEL VEETIL HOUSE, KODIYATHUR AMSOM,
PANNIKODU DESOM
KOZHIKODE THALUK.
10. CHENAMKULATHIL VEETIL C.U.CHACKO @ JOSEPH,
AGED 59 YEARS, KODIYATHUR AMSOM,
PANNIKODU DESOM
KOZHIKODE THALUK.
11. KOTTARAM KUNNEL VEETIL C.U.ELSAMMA,
AGED 55 YEARS
D/O.ULAHANNA, KODIYATHUR AMSOM,
PANNIKODU DESOM
KOZHIKODE THALUK.
12. PARAPOYIKKUNNEL C.U.THANKAMMA,, AGED 55 YEARS
KODARANHJI AMSOM DESOM, KOZHIKODE THALUK.
13. PADINJARAYIL VEETIL C.U.THRESIAMMA,,
AGED 52 YEARS
AKAPPUZHA AMSOM DESOM, NILAMBUR TALUK.

14. THULUVANIKKAL VEETIL C.U.JHANCY,,
AGED 50 YEARS,
KODARANHJI AMSOM DESOM, KOZHIKODE THALUK.
15. SOLY PAUIS, AGED 37 YEARS
W/O.PIOUS, KODIYATHUR AMSOM, PANNIKODU DESOM
KOZHIKODE THALUK.
16. ATHULYA PAUIS (MINOR), AGED 15 YEARS
REPRESENTED BY NEXT FRIEND AND GUARDIAN,
MOTHER
SOLY PIOUS, KODIYATHUR AMSOM, PANNIKODU DESOM
KOZHIKODE THALUK.
17. C.P.AMAL PAUIS,, AGED 12 YEARS
REPRESENTED BY NEXT FRIEND AND GUARDIAN,
MOTHER
SOLY PIOUS, KODIYATHUR AMSOM, PANNIKODU DESOM
KOZHIKODE THALUK.
18. C.DEVASYA,
CHENNAMKULATH, THIRUVAMBADI AMSOM DESOM
KOZHIKODE THALUK, KOZHIKODE DISTRICT-673 603.

R7 BY ADV. SRI.R..BINDU (SASTHAMANGALAM) (CAVEATOR)

R18 BY ADV. SRI.JOSE JONES JOSEPH

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY
HEARD ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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FAO No.265 of 2014
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Dated this the 8th day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Notice to the unserved respondents dispensed with. Service complete.
2. Appellants are those defendants who challenge an order of the trial court fixing an auction among sharers as regards the right to collect usufructs from the property in dispute in the suit for partition. The suit property has an extent of around 2 acres. It is stated to be a land with coconut trees. The right to collect coconuts is the subject matter of the impugned order.
3. While the appealing defendants state that the direction of the court below to have an auction between co-sharers is unsustainable, the plaintiffs stand to assert that they are entitled

to their shares of usufructs.

4. One way of looking at the problem in hand is to direct an auction of the possible yield and have such auction conducted without ignoring the profit quotient which would follow cropping. Many incidental issues may then crop up, if one were to be guided by laws relating to fixation of compensation either, to tenants or otherwise. The normal yardstick is to permit a deduction of one-fourth towards droppings and one-fourth of the remaining towards maintenance.

5. While dealing with the interlocutory application in which the impugned order was passed and the appeal arising therefrom, we think that the better course to be adopted would be to find out as to what is the plaintiffs' bargain in the litigation and to ensure that it gets protected. The plaint stands as if the defendants have excluded the plaintiffs from possession. The valuation statement attached to the plaint is prepared disclosing the plaintiffs'

assessment of their share of the annual income from the property as ₹40,740/–, which represents 11 out of 27 shares. We think that ends of justice would be satisfied if we round it off at ₹50,000/– (Rupees fifty thousand only) and direct that the appealing defendants will be entitled to take the yield depositing ₹50,000/–(Rupees fifty thousand only) per annum before the court below and we do so. This direction will operate with effect from 01.08.2014, since thereafter nobody has taken the yield, having regard to the different interlocutory orders continuing to govern the field. The amounts will be deposited before the court by the appealing defendants before they proceed to take the yield, from time to time, during the pendency of the suit. If there is any complaint about disobedience of this order, it will be open to the court below to issue further directions to ensure that necessary conduct follows from the parties to the litigation. The amount will lie in deposit till the suit is decided.

6. The questions relating to share of profits during the period before

August, 2014 will be dealt with by the court below during the final decision of the suit. It is further directed that none of the observations in this judgment and in the order impugned will bind the parties at final trial.

The appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

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