

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

F.A.O.No. 282 of 2014

O.S. NO. 148/2013 OF SUB JUDGE, PALA

APPELLANT(S)/PETITIONERS/PLAINTIFFS:

- 1. MANOJ M KARTHA, AGED 42 YEARS,
S/O. MADANAMOHANAN KARTHA, MALIACKAL HOUSE,
CHENGALAM P.O., KOOLI, KOTTAYAM DISTRICT.**
- 2. RADHAKRISHNA PANICKER, AGED 50 YEARS,
S/O. RAMAKRISHNAN NAIR, KEECHERI KUNNEL HOUSE,
KOORALI P.O., CHENGALAM, KOTTAYAM.**
- 3. K.K. CHANDRASEKHARA PANICKER, AGED 56 YEARS,
S/O. KESAVAN NAIR, PUTHENPURACKEL HOUSE, KOORALI P.O.
ELANGULAM, KOTTAYAM.**
- 4. M.C. ASOKACHANDRAN NAIR, AGED 39 YEARS
S/O. N.G. CHELLAPPAN NAIR, VADAKETHU HOUSE,
CHENGALAM P.O., ELAMKULAM, KOTTAYAM.**

**BY ADVS. SRI. G.SREEKUMAR (CHELUR)
SRI. NANDAGOPAL S.KURUP**

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

- 1. DAMODARA PANICKER,
S/O. NARAYANAN PILLAI, KALATHOOR HOUSE, CHENGALAM P.O.,
ELAMGULAM, NOW RESIDING AT KRISHNA KRUPA,
NARIYANANI P.O., KOPRAKULAM, ELAMGULAM, KOTTAYAM - 686 001.**
- 2. SUMANGALA DEVI, W/O.JAYAKRISHNAN,
KRISHNA PRIYA, NARIYANANI P.O.,
KOPRAKULAM, KOTTAYAM - 686 001.**

**R1 BY ADV. SRI. V.C. JAMES
SRI. C. HARINDRAMOHAN NAIR
R2 BY ADV. SRI. K. GOPALAKRISHNA KURUP (SR.)
SRI. ABHISHEK KURIAN**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 29-
06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

THOTTATHIL B. RADHAKRISHNAN

&

SUNIL THOMAS, JJ.

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F.A.O.No.282 of 2014

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Dated this the 29th day of June, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

Heard.

2. This appeal is against an order refusing to appoint a receiver.

The plaintiffs are the appellants.

3. The suit is for a declaration that the plaint schedule properties are those which are dedicated in trust with the senior most male member of the family and the dedication is for the purpose of the various religious matters. The deed of partition which has allegedly resulted in the creation of that trust is of 1101 M.E. which is in 1926 A.D. The allegation of the plaintiffs is that sometimes in 1970, the first defendant came to be in occupation of the property in question and later on, by his manipulations, the revenue records were got corrected to show the mutation in his personal name. The further plea is that the first defendant

thereafter transferred the property to the daughter of the second defendant in 2006. We may immediately recall that the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force on 01.12.1976.

4. The court below looked into the documents including the settlement, the revenue papers and the transfer by the first defendant to the second defendant. It also took note of the fact that there is already an order of temporary injunction in force as against the defendants preventing them from committing any act of waste in the property. Deliberating on the quality and content of the documents, the court below has made certain observations which tend to speak on the nature of the transaction and as to whether the property is in co-ownership or there is a resultant trust created on account of the partition of 1101 M.E. The trial court, ultimately, concluded that there is no reason to invoke the provisions of Order XL CPC and appoint a receiver since such a harsh measure is uncalled for on the facts and circumstances of the case.

5. Hearing the learned counsel for the parties, we are of the view that the impugned order gives reasons as to why the court below found that it is not just and convenient to appoint a receiver. More

importantly, it also needs to be indicated that though the alleged transfer by the first defendant to the second defendant is in 2006, the suit is filed only in 2013. We would also note that though this appeal was admitted on 23.09.2014, no interlocutory orders have been passed and there is no complaint even until today as to any violation of the order of temporary injunction against the defendants by the court below. The property in question is stated to be planted with rubber. The trial court has noted that there is no case of any perilous situation having been pointed out as regards possession or user of the land. The plaintiffs, ultimately, are trying to agitate a question relating to the quality of the title as regards the property in question in so far as the 1101 M.E. partition is concerned. Very many issues as to whether the documents result in creation of trust or otherwise, may be germane for consideration at trial. Therefore, it would only be appropriate that the court below decides the suit untrammelled by anything stated in the impugned order. The order of injunction has already been granted by the court below restraining the defendants from committing any act of waste. That will continue until the final disposal of the suit. The defendants will also stand restrained from putting up any construction or from changing the nature of the plaint schedule property till the disposal of the suit. It is so ordered hereby.

6. The trial court is requested to make an endeavour to list the case for trial and make an attempt to finally dispose of the matter on a priority basis.

Subject to what is aforesaid in relation to the injunction and direction regarding the trial of suit, this appeal is dismissed. The court below will decide the suit untrammelled by anything stated in the impugned order or in this judgment as regards the merits of the rival contentions. The parties are directed to mark appearance before the court below on 30.11.2015.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

Sd/-

**SUNIL THOMAS
JUDGE**

rkj

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P.A. TO JUDGE