

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

FAO (RO).No. 77 of 2014 ()

AS 106/2003 of SUB COURT, TIRUR
OS 121/1998 of MUNSIFF COURT, PARAPPANANGADI

APPELLANTS/RESPONDENTS/DEFENDANTS :

1. KALI, AGD 81 YEARS, W/O.OORALATH PABADI CHERIYA KUNHATHAN,
RESIDING AT VAZHAYOOR AMSOM DESOM,
ERNAD TALUK.
2. SIVADASAN, AGED 57 YEARS, S/O.OORALATH PABADI CHERIYA KUNHATHAN,
RESIDING AT VAZHAYOOR AMSOM DESOM,
ERNAD TALUK.
3. CHANDRAN, AGED 47 YEARS,
S/O.OORALATH PABADI CHERIYA KUNHATHAN,
RESIDING AT VAZHAYOOR AMSOM DESOM,
ERNAD TALUK.
4. KAMALA, AGED 59 YEARS,
W/O.KARAPANKANDI VEETIL NAYADI,
RESIDING AT FEROKKE AMSOM DESOM, ERNAD TALUK.
5. JANAKI, AGED 45 YEARS,
RESIDING AT VAZHAYOOR AMSOM DESOM,
ERNAD TALUK.
6. SYAMALA, AGED 42 YEARS,
S/O.KEERIKUNNATH VEETIL VELAYUDHAN.
7. SURESH BABU, AGED 39 YEARS,
S/O.ARIYILAKKAT VEETIL KUNHAN, AZHINHILAM AMSOM DESOM,

8. SARALA, AGED 37 YEARS, W/O.MUTHUKUTHU VEETIL KUTTAN,
TIRURANGADI TALUK, THENHIPALAM AMSOM DESOM.

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)

SRI.SAJU.S.A

SMT.SHEEJA P.A.

SMT.MEENA.A.

SRI.K.C.KIRAN

RESPONDENT(S)/APPELLANTS 1 TO 4, 6 TO 18/PLAINTIFFS :

1. CHANDRAN, AGED 60 YEARS,
S/O.OORALATH PAMBADI KUNHATHAN,
2. VELAYUDHAN, AGED 53 YEARS,
S/O.OORALATH PAMBADI KUNHATHAN,
3. RAJAN, AGED 43 YEARS,
S/O.OORALATH PAMBADI KUNHATHAN,
4. CHAKKIKUTTY, AGED 85 YEARS,
S/O.OORALATH PAMBADI KUNHATHAN,
5. KOTTIKUTTY, AGED 73 YEARS,
S/O.LATE OORALATH PAMBADI KARI,
6. MADHAVI, AGED 53 YEARS,
D/O.LATE OORALATH PAMBADI KARI,
7. BALASUBRAHMANIAN, AGED 43 YEARS,
S/O.OORALATH PAMBADI ASHOKAN,
8. RAVEENDRAN, AGED 40 YEARS,
S/O.OORALATH PAMBADI ASHOKAN,
9. BABY, AGED 37 YEARS, S/O.OORALATH PAMBADI ASHOKAN,
10. KALYANI, AGED 65 YEARS, S/O.OORALATH PAMBADI ASHOKAN,
11. KOTTIKUTTY, AGED 67 YEARS,
D/O.OORALATH PAMBADI NEELANDAN,

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12. AMMU, AGED 65 YEARS, W/O.OORALATH PAMBADI KUTTAN,
RESIDING AT VAZHAYOOR AMSOM DESOM, ERNAD TALUK, PIN 673 633.
13. SREEKUMARAN, AGED 46 YEARS, S/O.OORALATH PAMBADI KUTTAN, -DO-
14. BINDU, AGED 44 YEARS, D/O.OORALATH PAMBADI KUTTAN, -DO-
15. SIVAN, AGED 42 YEARS,
S/O.OORALATH PAMBADI KUTTAN, -DO-
16. BEENA, AGED 39 YEARS,
D/O.OORALATH PAMBADI KUTTAN, -DO-
17. SARADA, D/O.OORALATH PAMBADI KUTTAN, -DO-

(ALL RESPONDENTS ARE RESIDIN G AT
VAZHAYOOR AMSOM DESOM, ERNAD TALUK, PIN 673 633.)

R1-R3 & 5-R17 BY ADV. SRI.K.N.CHANDRABABU
R1-R3 & 5-R17 BY ADV. SRI.K.DHANESH KUMAR

THIS FIRST APPEAL FROM ORDER – REMAND ORDER HAVING BEEN FINALLY HEARD ON
10-03-2015, THE COURT ON 24.3.2015 DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

F.A.O.(R.O.) No.77 of 2014

Dated 24th March, 2015.

J U D G M E N T

The decision of the Court of the Subordinate Judge, Tirur in A.S.No.106 of 2003 dated 16.12.2003, by which the suit O.S.No.121 of 1998 on the file of the Court of the Munsiff, Parappanangadi was remitted for fresh disposal, is under challenge in this appeal. The legal representatives of the first defendant are the appellants.

2. O.S.No.121 of 1998 is a suit for partition. The plaint schedule property belonged to one Kunhathan as obtained by him by virtue of Ext.A1 lease deed. The case set up in the plaint is that on the death of Kunhathan, the property devolved on his four sons, Kari, Chathankutty, Kunhavutty and Unninagan. On the death of Kari, his share of the property devolved on his son Kunhathan and on his death, the said share of the property devolved on plaintiffs 1 to 4. On the death of Chathankutty, his share of the property devolved on his son Kari and on his death, the said share of the property devolved

on plaintiffs 5 to 7 and the children of his deceased son Asokan, namely, plaintiffs 8 to 11. On the death of Unninagan, his share of the property devolved upon his son Neelandan and on his death, the said share of the property devolved on the 12th plaintiff. On the death of Kunhavutty, his share of the property devolved on his son, the defendant. The plaintiffs have, therefore, claimed partition of their $\frac{3}{4}$ share in the plaint schedule property.

3. The first defendant contested the suit contending mainly that the plaintiffs have no right in the property. According to him, Kunhathan had only one son, namely, his father Kunhavutty and on his death, the plaint schedule property devolved exclusively on him.

4. The trial court dismissed the suit holding that the plaintiffs have not established that their predecessors namely, Kari, Chathankutty and Unninagan are the children of the original owner of the property, namely, Kunhathan.

5. The plaintiffs challenged the decision of the trial court in appeal. The appellate court remitted the suit for fresh

disposal. The legal representatives of the first defendant are aggrieved by the said decision of the appellate court and hence this appeal.

6. It is beyond dispute that the plaint schedule property is known as Ooralath. Exts.A2 to A4 are the death certificates of Kari, Chathankutty and Unninagan. Though the particulars of the names of the parents of the said persons are not mentioned in Exts.A2 to A4, their house name is mentioned in the said documents as Ooralath. The fact that plaintiffs 1 to 3 are residing in the plaint schedule property is not in dispute. According to the first defendant, they are residing in the plaint schedule property as permitted by the first defendant. The appellate court noticed that the said case of the first defendant has not been established in the suit. Ext.A10 is the document by which one Narayanan Nair assigned the jenm right over the plaint schedule property to the father of plaintiffs 1 to 4, predecessors of plaintiffs 8 to 11 and 12 and the first defendant. Though the first defendant contended that the said document is a fabricated one, the appellate court noticed that

the said document was executed in the year 1967 and there was no occasion for anybody to fabricate a document of that nature at that point of time. In the appeal, the plaintiffs caused the production of a few documents. They have also filed an application to admit the said documents in evidence in the suit. The appellate court noticed that the documents produced before the appellate court would show that the first defendant had availed a loan from the Kerala State Scheduled Caste and Scheduled Tribe Development Corporation on the strength of Ext.A10 jenm assignment deed. It is in the said facts and circumstances, the appellate court took the view that the conclusion arrived at by the trial court that Kari, Chathankutty and Unninagan are not the children of the original owner of the property, namely, Kunhathan, cannot be accepted and the issue as to whether the aforesaid persons are the children of the original owner of the property needs to be considered afresh. On the facts disclosed, it cannot be said that the said decision of the appellate court is illegal or improper in any manner. The appellate court has not arrived at any final decision on the

issue. Instead, the appellate court has only directed that a fresh decision has to be arrived at on the question as to whether Kari, Chathankutty and Unninagan are the children of the original owner of the property, namely, Kunhathan, after affording the parties an opportunity of hearing. The appeal is therefore, devoid of merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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