

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

FAO.No. 306 of 2010 ()

AS 22/2006 of SUB COURT, HOSDURG

O.S.NO.300/1999 OF MUNSIFF COURT, HOSDRUG

APPELLANT/9TH DEFENDANT/9TH RESPONDENT.

KANNYADIL RUGMINI

AGED 41 YEARS, D/O.NARAYANAI, RESIDING AT KUTTAMMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG
KASARAGOD DISTRICT.

BY ADVS.SRI.M.SASINDRAN

SRI.V.VENUGOPAL

RESPONDENT(S)/PLAINTIFF/DEFENDANTS 1 TO 8 AND 10 TO 22/APPELLANT/RESPONDENTS 1 TO 8
AND 10 TO 22 :

1. K.DAMODARAN, AGED 48 YEARS,
S/O.LATE RAMA PODUVAL AND KANNYADIL MANIKKAM
NOW RESIDING AT 'SREESAILAM' HOUSE
KUTTIYATHOOR VILLAGE, TALIPARAMBA TALUK
CHATTUKAPARA P.O., KANNUR DISTRICT.
2. KANNYADIL KAMMARAN NAIR (DIED),
S/O.KAMMARAN NAIR AND LATE KANNYADIL UCHIRA AMMA
KANNYADIL HOUSE, KUTTAMMATH, CHERUVATHOOR
VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT.
3. KANNAYADAN NARAYANI,
AGED 64 YEARS, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT.

4. KANNYADAN KUNHIRAMAN,
AGED 61 YEARS, S/O.KANNYADIL UCHIRA AMMA
RESIDING AT KUTTAMATH, CHERUVATHOOR VILLAGE
HOSDURG TALUK, KASARAGOD DISTRICT.
5. KANNYADIL NARAYANAN (DIED), (*LEGAL REPRESENTATIVE RECORDED)
AGED 54 YEARS, S/O.KANNYADIL UCHIRA AMMA
RESIDING AT KUTTAMATH, CHERUVATHOOR VILLAGE
HOSDURG TALUK, KASARAGOD DISTRICT.
6. KANNYADIL KRISHNAN,
AGED 50 YEARS, S/O.LATE KANNYADIL MANIKKAM
RESIDING AT KUTTAMATH, CHERUVATHOOR VILLAGE
HOSDURG TALUK, P.O.CHERUVATHOOR, KASARAGOD DISTRICT.
7. KANNYADIL MURALIDHARAN,
AGED 51 YEARS, S/O.NARAYANI, RESIDING AT KUTTAMMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
8. KANNYADIL RAMACHANDRAN (DIED),
S/O.NARAYANI, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
9. KANNYADIL GOPALAKRISHNAN,
AGED 47 YEARS, S/O.NARAYANI, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
10. KANNYADIL SURENDRAN,
AGED 43 YEARS, S/O.NARAYANI, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
11. K.KARTHIYANI, AGED 56 YEARS,
RESIDING AT KUTTAMATH, CHERUVATHOOR VILLAGE
P.O.CHERUVATHOOR, HOSDURG TALUK, KASARAGOD DISTRICT.

12. K.ASHOKAN, AGED 36 YEARS,
S/O.KANNYADIL GOVINDAN, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
13. K.VANAJA, AGED 36 YEARS,
D/O.KANNYADIL GOVINDAN, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
14. K.AJITHA, AGED 34 YEARS,
D/O. KANNYADIL GOVINDAN, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
15. E.V.RATNAKARAN, AGED 51 YEARS,
S/O.LATE KAMMARAN NAIR, RESIDING AT KUTTAMATH
CHERUVATHOOR VILLAGE, P.O.CHERUVATHOOR, HOSDURG TALUK
KASARAGOD DISTRICT.
16. P.THANKAMANI, AGED 45 YEARS,
D/O.LATE KAMMARAN NAIR AND W/O.KARUNAKARAN.P.
RESIDING AT CHERAPURAM, P.O.NILESHWAR
KASARAGOD DISTRICT.
17. P.MADHUSOODHANAN, AGED 35 YEARS,
S/O.LATE KAMMARAN NAIR, RESIDING AT CHERUVATHOOR
KOVVAL, P.O.CHERUVATHOOR, KASARAGOD DISTRICT.
18. PARVATHI AMMA, AGED 70 YEARS,
W/O.LATE KAMMARAN NAIR, RESIDING AT
CHERUVATHOOR KOVVAL, P.O.CHERUVATHOOR
KASARAGOD DISTRICT.
19. NAVEEN, AGED 30 YEARS,
S/O.LATE RAMACHANDRAN NAMBIAR, HEAD CONSTABLE
C/O.OMANA, RESIDING AT SANKARA NARAYANAPURAM
POLICE QUARTERS, P.O.SANKARA NARAYANAPURAM
(VIA) KUNTHAPURAM, SOUTH CANARA DISTRICT, KARNATAKA STATE.

20. NITHIN, AGED 27 YEARS,

S/O.LATE RAMACHANDRAN NAMBIAR, HEAD CONSTABLE
C/O.GOPALAKRISHNAN NAMBIAR, KARIKURUMBA, B.C.ROAD
P.O.B.C.ROAD, SOUTH CANARA DISTRICT, KARNATAKA STATE.

21. OMANA, AGED 42 YEARS,

W/O.LATE RAMACHANDRAN NAMBIAR
RESIDING AT SANKARA NARAYANAPURAM POLICE, QUARTERS
P.O.SANKARA NARAYANAPURAM, (VIA), KUNTHAPURAM
SOUTH CANARA, KARNATAKA STATE.

22. VARUN, AGED 10 YEARS,

MINOR SON OF LATE RAMACHANDRAN NAMBIAR
HEAD CONSTABLE AND OMANA, RESIDING AT SANKARA
NARAYANAPURAM POLICE QUARTERS, P.O.SANKARA
NARAYANAPURAM, (VIA) KUNTHAPURAM, SOUTH CANARA, KARNATAKA STATE.

23. T.JANAKI AMMA,

NEAR PONMALAM TEMPLE, CHERVATHUR P.O., PILICODE
KASARAGOD DISTRICT
(LEGAL HEIR OF DECEASED K.NARAYANAN-R5).
*(RECORDED AS LEGAL HEIR OF DECEASED R5).

R23 IS RECORDED AS LEGAL HEIR OF THE DECEASED FIFTH RESPONDENT VIDE ORDER
DATED 5.11.2012 IN FAO 306 OF 2010)

R1 BY ADV. SRI.T.K.VIPINDAS
R1 BY ADV. SMT.P.K.PRIYA
R1 BY ADV.SRI. K.V.SREEVINAYAKAN
R1 BY ADV. SRI.MUHAMMED HUSSAIN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 25-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

F.A.O. No.306 of 2010

Dated 25th February, 2015.

J U D G M E N T

The decision of the Court of the Subordinate Judge, Hosdurg in A.S.No.22 of 2006 by which the suit O.S.No.300 of 1999 on the file of the Court of the Munsiff, Hosdurg was remitted for fresh disposal is under challenge in this appeal.

2. O.S.No.300 of 1999 is a suit for partition. The case of the plaintiff is that the plaint schedule property covered by Ext.A1 lease deed is a joint family property of the plaintiff and others and he is entitled to 1/15 share over the same. The first defendant contended that the plaint schedule property is not the property covered by Ext.A1 lease deed and the same is a property obtained by him on an oral kuzhikkanam from Thazhakkattu mana. It was also contended by the first defendant that the plaint schedule property was gifted by him to the ninth defendant as per Ext.B14 deed and she is in possession and enjoyment of the property.

3. The trial court found that the plaintiff has not

established his case that the plaint schedule property is the property covered by Ext.A1 lease deed and consequently dismissed the suit. In appeal, the appellate court, on a re-appraisal of the materials on record, found that the plaint schedule property is the property covered by Ext.A1 lease deed and remitted the suit for fresh disposal to decide the share of the plaintiff. The ninth defendant who is aggrieved by the said order of remand has come up in this appeal.

4. Heard the learned counsel for the appellant as also the learned counsel for the first respondent, the plaintiff in the suit.

5. It is beyond dispute that the property covered by Ext.A1 lease deed is a joint family property of the plaintiff and others and that the plaintiff is entitled to a share in that property. It is also beyond dispute that a portion of the property lying on the south of the property covered by Ext.A1 lease was assigned by the karanavan of the joint family as per Ext.A2 assignment deed and the said property is now held by one Ratnakaran. The contention of the first defendant is that the plaint schedule property is not the property covered by

Ext.A1 lease deed. In other words, the dispute is as to the identity of the plaint schedule property. Ext.C1 is the report submitted by the Advocate Commissioner appointed in the suit. The eastern boundary of the plaint schedule property is shown in Ext.C1 as a byline. The southern boundary of the plaint schedule property is shown in Ext.C1 as the property of Ratnakaran. The western boundary of the plaint schedule property is shown by the Commissioner as the property of one P.Rajan and the northern boundary of the plaint schedule property is shown by the Commissioner as Cheruvathur - Kayyur road. In Ext.A1, the northern boundary of the property is shown as “മനവക കുളമുള്ള പാമ്പ്” and the western boundary is shown as temple property. While the eastern and southern boundaries of the plaint schedule property tally with Ext.A1 property, the northern and western boundaries differ. True, the plaintiff has a case that Ext.A1 is a document executed in the year 1918 and the northern road was formed much later. This fact is not admitted by defendants 1 and 9. Even assuming that the northern boundary of the plaint schedule property is as shown in Ext.A1 and that the road has come only later, there is

no satisfactory materials to hold that the western boundary is one and same. In the said circumstances, it cannot be held that the plaintiff has established that the plaint schedule property is the property covered by Ex.A1 lease deed. However, in so far as there is no dispute to the fact that the plaintiff is entitled to partition of the property covered by Ext.A1 lease deed, I am of the view that the plaintiff shall be given yet another opportunity to establish the identify of the property.

6. In the result, the appeal is allowed in part, the finding of the appellate court that the property identified by the Commissioner as plot ABCDEF is the plaint schedule property is vacated and the trial court is directed to dispose of the suit afresh, after affording to the plaintiff an opportunity to establish that the plaint schedule property is the property covered by Ext.A1 lease deed as remaining after Ext.A2 assignment.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)