

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Mat.Appeal.No. 530 of 2015

AGAINST THE COMMON ORDER IN OA 817/2013 of FAMILY COURT,
KOZHIKODE, DATED 08-04-2015

APPELLANT/RESPONDENT: -

ABDULASEES, AGED 45 YEARS,
S/O.KUNHAPPA,
THENANGAPARAMBIL HOUSE,
P.O.CHERUVADI,
KODIYATHUR AMSOM,
CHERUVADI DESOM,
KOZHIKODE DISTRICT.

BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.JOSEPH GEORGE(MULLAKKARIYIL)
SRI.ARUN KRISHNA DHAN

RESPONDENT/PETITIONER: -

HAJIRA, AGED 32 YEARS,
D/O.MOIDEENKUNHI,
PRIKKACHALKUNNUMMAL HOUSE,
NEELESWARAM P.O.,
NEELESWARAM AMSOM DESOM,
KOZHIKODE DISTRICT, PIN: 673 582.

BY ADV.SRI.R.SUDHISH
BY ADV.SMT.M.MANJU

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DMR/-

**C.K. ABDUL REHIM
&
K. RAMAKRISHNAN, JJ.**

Mat. Appeal No. 530 of 2015

Dated this the 25th day of June, 2015

JUDGMENT

K. Ramakrishnan, J.

Respondent in O.A. No.817/2013 on the file of the Family Court, Kozhikode, is the appellant herein. The above suit was filed by the respondent herein seeking for partition of the Plaint Schedule properties, alleging that the property is a co-ownership property of the appellant and the respondent. This was filed along with O.A.No. 835/2013 and M.C. No. 274/2013 and after evidence by the impugned common judgment, the Family Court has decreed the suit directing partition of the Plaint Schedule property into two equal shares and allotting one such share to the respondent herein and the preliminary decree for partition was passed accordingly. Again aggrieved by the same, the present appeal has been preferred by the appellant/respondent before the Court below.

2. During the pendency of the appeal, the matter has been referred for mediation and in the mediation, parties have resolved their disputes and entered into a settlement agreement which has been produced by the Mediator along with the report.

3. When the matter came up for hearing today, both the counsel submitted that the mediation agreement may be accepted and the appeal may be disposed of in terms of the mediation agreement. The counsel for the appellant raised an apprehension that in case even after payment of the amount, if the respondent did not execute the relinquishment deed in respect of her half share, whether they will have to go for fresh suit for specific performance. The apprehension appears to be without any force as even in the compromise itself it was mentioned that on getting the amount, the respondent will release her share in favour of the appellant and in case the amount is not paid, it was mentioned in the mediation agreement itself that the respondent herein is entitled to file a final decree petition for getting her share separated and allotted to her and it can be inferred from this that the amount is paid and

relinquishment deed is not executed then the document can be get executed through Court in execution of this decree. So in view of the specific terms in the agreement itself, there is no necessity for filing a separate proceedings by filing a suit for specific performance. So the compromise is recorded and the decree passed by the Court below is set aside and the appeal is allowed modifying the decree in terms of the mediation agreement entered into between the parties and the appeal has been disposed of in terms of the settlement agreement. The mediation agreement will form part of the judgment.

Accordingly, the appeal is allowed and disposed of as stated above.

**C.K. ABDUL REHIM
JUDGE**

**K. RAMAKRISHNAN
JUDGE**

DMR/-