

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

OP(C).No. 87 of 2012 (O)

AGAINST THE FINAL JUDGMENT IN O.S.NO.1987/2000 DATED 24.10.2011 PASSED IN
I.A.NO.12236/2005 OF II ADDITIONAL MUNSIF COURT, THIRUVANANTHAPURAM

PETITIONER(S)/PLAINTIFF:

S.SANTHOSH KUMAR
S/O. SIVATHANU CHETTIYAR, CHARUKKATTAKKAL VEEDU
V.P.NO.1/366 & 1/367, CHOOZHATTUKOTTA
VILAVOORKAL VILLAGE, MALAYAM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

RESPONDENT(S)/DEFENDANTS:

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1. PONNAMMAL
D/O. MEENAKSHI AMMAL
RESIDING AT PULLIMOOTU VILAKATHU VEEDU, V.P.NO.1/30
CHOOZHATTUKOTTA, VILAVOORKAL VILLAGE, MALAYAM P.O.
THIRUVANANTHAPURAM-695571.
 2. USHA KUMARI
D/O. PONNAMMAL, RESIDING AT TC 28/304
PARUVILAKATHU PUTHAN VEEDU, SHEAVELY LANS, KAITHAMUKKU
THIRUVANANTHAPURAM-695024.
 3. S.RAMACHANDRAN
S/O. SIVARAMA CHETTIYAR, RESIDING AT VP NO.1/332
ASWATHY BHAVAN, CHOOZHATTUKOTTA, VILAVOORKAL VILLAGE
MALAYAM P.O., THIRUVANANTHAPURAM-695571.
 4. PREMAKUMARI
D/O. PONNAMMAL, RESIDING AT TC NO.29/243(1), 'JIII'
THENGAPURA LANE, PETTAH P.O., THIRUVANANTHAPURAM-695024.
 5. RAJAGOPAL
S/O. SIVATHANU CHETTIYAR
RESIDING AT PULIMOOTTUVILAKATHU VEEDU, VP NO.1/330
CHOOZHATTUKOTTA, VILAVOORKAL VILLAGE, MALAYAM P.O.
THIRUVANANTHAPURAM-695571.
 6. C.P.CHITHRA
D/O. PONNAMMAL
RESIDING AT PULIMOOTTUVILAKATHU VEEDU, VP NO.1/330
CHOOZHATTUKOTTA, VILAVOORKAL VILLAGE, MALAYAM P.O.
THIRUVANANTHAPURAM-695571.

7. MOHANAN

S/O. LATE VELAYUDHAN CHETTIYAR
RESIDING AT PULIMOOTTUVILAKATHU VEEDU, VP NO.1/330
CHOOZHATTUKOTTA, VILAVOORKAL VILLAGE, MALAYAM P.O.
THIRUVANANTHAPURAM-695571.

8. KRISHNANKUTTY

S/O. KUTTAN CHETTIYAR, CHETTIVILAKATHU PUTHEN VEEDU
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM-695013.

9. SANGEETHA MOHAN

D/O. MOHAN, PULIMOOTTUVILAKATHU VEEDU
VP NO.1/330, CHOOZHATTUKOTTA, VILAVOORKAL VILLAGE
MALAYAM P.O., THIRUVANANTHAPURAM-695571. MINOR REPRESENTED BY
HER FATHER AND LEGAL GUARDIAN THE 7TH RESPONDENT

R1 TO R3 BY ADV. SRI.V.SURESH
R1 TO R3 BY ADV. SRI.G.SUDHEER
R5 BY ADV. SRI.RAM MOHAN.G.
R5 BY ADV. SRI.G.P.SHINOD
R5 BY ADV. SRI.MANU V.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-02-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

EXT.P1 : TRUE COPY OF THE PLAINT IN OS 1987 ON THE FILE OF THE 2ND ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P2 : TRUE COPY OF THE COMMISSION REPORT, DTD.6.2.2001.

EXT.P3 : TRUE COPY OF THE PRELIMINARY JUDGMENT IN OS 1987 OF 2000, DTD. 11.8.2005 ON THE FILE OF THE 2ND ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P4 : TRUE COPY OF THE PRELIMINARY DECREE IN OS 1987 OF 2000, DTD. 11.8.2005 ON THE FILE OF THE 2ND ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P5 : TRUE COPY OF THE PLAN OF THE COMMISSIONER.

EXT.P6 : TRUE COPY OF THE OBJECTION FILED BY THE DEFENDANTS TO THE FINAL DECREE APPLICATION.

EXT.P7 : TRUE COPY OF OBJECTION FILED BY THE DEFENDANTS TO THE COMMISSION REPORT.

EXT.P8 : TRUE COPY OF THE JUDGMENT IN OS 1987 OF 2000 ON THE FILE OF THE 2ND ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P9 : TRUE COPY OF THE FINAL DECREE APPLICATION FILED IN THE SUIT FOR PARTITION, VIZ. I.A.NO.12236/2005 IN OS NO.1987/2000 ON THE FILE OF THE II ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.87 of 2012

Dated this the 23rd day of February, 2015

JUDGMENT

Ext.P8 judgment passed by the learned Additional Munsiff, Thiruvananthapuram in O.S.No.1987 of 2000 is under challenge in this proceedings. The suit is one for partition. A preliminary decree was passed in the matter. Thereafter the petitioner filed I.A.No.12236 of 2005 for passing a final decree. A commission was deputed to measure out and divide the properties in terms of the preliminary decree. The parties adduced evidence before the court. The court found that Exts.C1 and C1 (a) plan and report submitted by the commissioner could not be relied upon for passing a final decree. The court below, though did not enumerate reasons for rejecting Exts.C1 and C1(a), found that they are incorrect and defective. But, the court below strangely dismissed the final decree application and also the suit. Grievance of the petitioner is that above illegality was committed by the court below without any justification.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the contesting respondents.

3. By exercising jurisdiction under Article 227 of the Constitution of India, this Court cannot go into vexed questions of fact. What is to be

considered in this supervisory jurisdiction is whether the court below has acted beyond its jurisdiction or has failed to exercise the jurisdiction vested in it. It is evident from the operative portion of the impugned judgment that the court below failed to proceed to adjudicate the disputes in the final decree proceedings. It goes without saying that after passing a preliminary decree, the partition suit should end in a final decree, whereby the properties included in the suit, after actual division, are given to the respective sharers. No court shall abdicate its jurisdiction and responsibility to pass an effective final decree by simply dismissing the final decree application and the suit. This is a clear illegal exercise of jurisdiction vested in the court. The observations by the lower court in paragraph 12 of the impugned judgment show the lack of understanding and non-application of mind to the courses open to a court in a final decree proceedings. There are only three methods in which a commission report, plan and account in a final decree matter can be dealt with. First one, accept the report, plan and account and pass a final decree in terms of them. Secondly, remit the same to the same commissioner, if there are reasons for doing so. Thirdly, set aside the same for incurable defects or illegalities and appoint another commissioner for doing the job properly. There is no fourth course open to the court. The final decree application

cannot be dismissed if the petitioner is not at fault. In other words, the unreliability of the report and plan submitted by the commissioner cannot be mulcted on the party. The Munsiff erred in thinking that he can dismiss the final decree application, and one step ahead the suit itself, if the commission report and plan is found to be erroneous. This is highly objectionable. The operative portion of the judgment would show that the court ultimately dismissed the suit without applying its mind and without affording an opportunity to the parties to take steps to see that a proper final decree is passed on the basis of a commission report and plan which can be relied on. In the absence of such an attempt on the part of the court below, I am of the view that the impugned judgment is completely illegal and cannot be sustained.

In the result, the original petition is allowed. The impugned judgment is set aside. The matter is remitted back to the court below with a direction that I.A.No.12236 of 2005 in O.S.No.1987 of 2000 shall be restored to file and it shall be disposed of in accordance with law after affording opportunity to the parties to substantiate their contentions, including the appointing of another commissioner, if the earlier report is set aside. The parties shall appear before the court below on 16.03.2015. The court below shall dispose of the matter untrammelled by any of the

observations contained in this judgment.

The Registry shall forward a copy of the judgment to the Munsiff wherever he works and whatever post now he holds, for future guidance.

All pending interlocutory applications will stand closed.

A. HARIPRASAD, JUDGE.

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