

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

RSA.No.458 of 2005 (D)

AGAINST THE JUDGMENT IN AS 241/2003 of DISTRICT COURT, KOZHIKODE
DATED 18-12-2004

AGAINST THE JUDGMENT IN OS 32/2000 of SUB COURT, VADAKARA DATED 28-
06-2003

APPELLANT/1ST RESPONDENT/1ST DEFENDANT:

LAKSHMIKUTTY AMMA, D/O. RAMAKURUP,
AGED 51 YEARS, VENGOLIKANDIYIL HOUSE, VAROKOLI P.O
KUTTIPURAM AMSOM NARIKUNI DESOM, VADAKARA.

BY ADV. SRI.P.A.AUGUSTINE (AREEKATTEL)

RESPONDENTS/APPELLANTS/RESPONDENTS 2 TO 5/ PLAINTIFFS/DEFENDANTS 2 TO 5:

-
1. M.K. BALAKRISHNAN NAIR, S/O. RAMAKURUP,
MOOTHOR HOUSE, KOTTATHARA DESOM, VYTHIRI.
 2. BHASKARAN NAIR, S/O. RAMAKURUP,
MOOTHOR HOUSE, KOTTATHARA DESOM, VYTHIRI.
 3. SUNILKUMAR, S/O. RAMAKURUP,
MOOTHOR HOUSE, KOTTATHARA DESOM, VYTHIRI.
 - *4. M.K. NARAYANI AMMA, W/O. RAMAKURUP, **(DIED - LRs RECORDED)**
MOOTHOR HOUSE, KOTTATHARA DESOM, VYTHIRI.
 5. M. SHYLAJA DEVI, D/O RAMAKURUP,
AGED 41 YEARS, BAMSURI HOUSE, SANTHIGRAM PO.
MANJERI AMSOM, DESOM, MALAPPURAM DISTRICT.
 6. M. SUGATHAKUMARI, D/O. RAMAKURUP
AGED 38 YEARS, VENKITESWARA HOUSE, AMBUKUTHI P.O.
MANANTHAVADI, WYNAD DISTRICT.
 7. M. SUNITHAKUMARI, D/O. RAMAKURUP
AGED 36 YEARS, SATHYAMANDIRAM, OPP.MIMS
GOVINDAPURAM P.O., KOZHIKODE TALUK.

(CNTD.....2)

::2::

8. M. SURESHKUMAR, S/O. RAMAKURUP,
AGED 33 YEARS, DEVELOPMENT OFFICER, LIC OF INDIA
ALANGADAN QUARTERS, THURAKKAL P.O.
KONDOTTY AMSOM DESOM OF ERNAD TALUK
MALAPPURAM DISTRICT.

* AS PER ORDER DTD.1/7/2015 IN MEMO DTD. 15.6.2015, BEARING CF 2989/2015, THE SOLE APPELLANT AND RESPONDENTS 1 TO 3 AND 5 TO 8, WHO ARE ALREADY IN THE PARTY ARRAY, ARE RECORDED AS THE LEGAL HEIRS OF DECEASED 4TH RESPONDENT.

R1 TO 3 BY ADV. SRI.P.T.MOHANKUMAR
R1 TO 3 BY ADV. SMT.ARLISS TRENCY ANTONY
R5 TO 8 BY ADV. SMT.K.A.ANGEL TREENA

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

R.S.A.No.458 Of 2005

Dated this the 3rd day of November, 2015.

J U D G M E N T

The above captioned Regular Second Appeal arises out of the impugned judgment and decree dated 18.12.2004 of the District Court, Kozhikode in Appeal Suit, A.S.No.241/2003 which in turn arose out of the impugned judgment and decree dated 28.6.2003 of the Sub Court, Vadakara in Original Suit, O.S.No.32/2000.

2. The appellant herein is aggrieved by the impugned judgment by which the judgment and decree in O.S.No.32/2000 of the Sub Court, Vadakara was modified by the lower appellate court in A.S.No.241/2003. A preliminary decree for partition was passed reserving the house in the plaint schedule property in favour of the appellant herein without valuation as it was found that the construction of the house was with the appellant's own fund. Aggrieved by the reservation granted in favour of the appellant/1st defendant in the preliminary decree for partition in the Original Suit, respondents 1 to 4 herein preferred Appeal Suit, as

R.S.A.No.458 Of 2005

A.S.No.241/2003 before the District Court, Kozhikode challenging the preliminary decree to the extent it granted reservation in favour of the appellant herein. The lower appellate court allowed the Appeal Suit and modified the preliminary decree setting aside the reservation of the house granted to the appellant herein as per the preliminary decree. It was under these circumstances, the instant Regular Second Appeal has been preferred by the appellant herein.

3. It is pointed out by both sides that though there was a stay passed by this Court in this appeal against passing of the final decree alone and though the said stay was granted until further order, without noting those aspects regarding the currency of the stay order, the trial court had passed the final decree allotting the house to the appellant herein without valuation. Now it is pointed out by both sides that the aforesaid passing of the final decree by the trial court has become final. It is pointed out by both sides that both parties have not filed any appeal against the passing of the final decree. It is also stated by Sri.P.A.Augustine, learned counsel

R.S.A.No.458 Of 2005

appearing for the appellant herein and Sri.P.T.Mohan Kumar, learned counsel appearing for respondents 1 to 3 that both sides are fully agreeable to the terms of the final decree now passed by the trial court as stated above. It is also stated by both sides that accordingly this Regular Second Appeal can be closed confirming the final decree passed by the trial court on 29.1.2013.

4. The aforestated submissions made by both sides are recorded. Both sides submit that no other matters be decided by this Court except recording the submissions of both sides that they are fully satisfied with the final decree now passed by the trial court on 29.1.2013.

In the light of the above said submissions made by both sides, this Regular Second Appeal stands finally disposed of by confirming the final decree passed by the trial court on 29.1.2013.

ALEXANDER THOMAS,
Judge.

bkn/-