

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

RSA.No. 86 of 2006 ()

AS 17/2001 of SUB COURT, QUILANDY
OS 125/1996 of MUNSIFF COURT, PERAMBARA

APPELLANTS/APPELLANTS/PLAINTIFFS :

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1. A.K.SIVASANKARAN, S/O.ACHUTHAN,
AGED 54 YEARS, NADAMPUNATHIL PARAMBA,
NEAR WATER TANK, PUTHIYARA, KOZHIKODE.
 2. A.K.JAYARAMAN ALIAS A.K.JAYARAJAN,
S/O.ACHUTHAN, AGED 56 YEARS, PALAZHI
KOZHIKODE.
 3. A.K.PUSHAPA, D/O.ACHUTHAN, AGED 52 YEARS,
KUZHIKANDA PARAMBA, NADAKKAVU.P.O, KOZHIKODE.

BY ADV. SMT.M.HEMALATHA

RESPONDENTS/RESPONDENTS/DEFENDANTS :

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1. N.P.AMMU, KUZHIKANDI PARAMBA,
NADAKKAVU.P.O, KOZHIKODE (DIED).
 2. KOMMINIYOT ABDUL SALAM,
S/O. LATE AMMED, AGED 40 YEARS, MENHANNIAM
AMSOM, DESOM, KOYILANDY TALUK.
 3. KOMMINIYOT PATHUMMA, W/O. LATE AMMED,
AGED 65 YEARS, MENHANNIAM AMSOM, DESOM
KOYILANDY TALUK.
 4. KOMMINIYOT AMINA, W/O. LATE AMMED,
AGED 49 YEARS, MENHANNIAN AMSOM,
DESOM KOYILANDY TALUK.
 5. KOMMINIYOT AYSHA, W/O.KUNHAMMAD,
AGED 47 YEARS, MUKKALIL, THANDORAPARA
PERAMBRA AMSOM, DESOM, KOYILANDY TALUK.
 6. KOMMINIYOT NABEESA, W/O.IBRAHIM MASTER,
KUTTIKUNNUMMAL, KOOTAHLI AMSOM KOYILANDY TALUK.

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**7. KOMMINIYOT ASIYA, W/O.MOOSA,
AGED 44 YEARS, KUNNUMMAL, THURAYOOR AMSOM
DESOM, KOYILANDY TALUK.**

**8. KOMMINIYOT RUKHIYA, W/O. ABDURAHIMAN,
ANIKKOTH, THURAYUR AMSOM, DESOM
KOYILANDY TALUK.**

**R3 TO R8 BY ADV. SRI.B.KRISHNAN
BY ADV. SRI.R.PARTHASARATHY**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

R.S.A.No.86 of 2006

Dated this the 13th day of October, 2015

JUDGMENT

The defeated plaintiffs in a suit for setting aside a sale deed and for partition, are the appellants in this appeal.

2. The second defendant is the mother of the plaintiffs. The suit property originally belonged to the father of the second defendant. The father of the second defendant assigned the suit property to the second defendant, the plaintiffs and others by virtue of Ext.A1 assignment deed. The case of the plaintiffs is that later, by virtue of Ext.A2 assignment deed, the suit property was transferred by the second defendant to one Kunhikanaran without the consent and knowledge of the plaintiffs.

Kunhikanaran sold the suit property to another and after a few transactions, the suit property was acquired by the first defendant from one of the successors of Kunhikanaran. It is also the case of the plaintiffs that they were minors when Ext.A2 assignment deed was executed and the signatures appearing in Ext.A2 assignment deed as that of the plaintiffs are not put by them. The first defendant contended that the plaintiffs were majors at the time of execution of Ext.A2 assignment deed and that Ext.A2 assignment deed is a document executed by the plaintiffs. The trial court found that the plaintiffs have not established their case that they were minors at the time of execution of Ext.A2 assignment deed. The trial court also found that the plaintiffs have not established that the signatures contained in Ext.A2 assignment deed as that of the plaintiffs are not put by them. Consequently, the suit was dismissed. Though the plaintiffs took up the matter in appeal, on a reappraisal of

the facts and circumstances of the case, the appellate court confirmed the decision of the trial court. The plaintiffs, who are aggrieved by the concurrent decisions of the courts below, have thus come up in this second appeal.

3. Heard the learned counsel for the appellants.

4. The only issue to be considered is as to whether the plaintiffs have established their case that they were minors at the time of execution of Ext.A2 assignment deed and that they are not parties to the said document. Ext.A1 is the assignment deed by which the plaintiffs and their mother have acquired title to the suit property. Ext.A1 is a document executed in the year 1963. Ext.A2 is a document executed in the year 1971. Copies of Exts.A1 and A2 assignment deeds were made available to me at the time of hearing by the counsel for the appellants. The age of the first plaintiff is stated in Ext.A1 as 12 years and the age of the second plaintiff is stated in the said document as 15

years. Likewise, the age of the third plaintiff is stated in Ext.A1 as 10 years. Going by the age of the plaintiffs as stated in Ext.A1, it is evident that the plaintiffs had attained the age of majority at the time of execution of Ext.A2 assignment deed. Further, it is seen that in the course of trial, though the plaintiffs have applied for sending their signatures as contained in Ext.A2 assignment deed for comparison with their admitted signatures to an expert and though the court permitted them to do so, the plaintiffs have not taken steps for the same. Again, it is seen that though Ext.A2 assignment deed sought to be set aside was executed in the year 1971, the suit is filed only after about 25 years, in the year 1996. It is also seen that though the prayer in the suit is to set aside Ext.A2 assignment deed, Kunhikanaran, in whose favour the said document was executed was not made a party to the suit. It is in the aforesaid circumstances, the courts below came to the

conclusion that the plaintiffs have not established their case.

5. The learned counsel for the appellants contended that they are in possession of documents which would show that they were minors at the time of execution of Ext.A2 assignment deed and though the said documents were entrusted to the counsel, the same were not produced in court on account of an inadvertant omission on the part of their counsel. The learned counsel, in the circumstances, sought indulgence of this Court for a remand of the matter to the trial court to enable the plaintiffs to establish their case. It was also pointed out that the plaintiffs were not informed about the permission granted by the trial court to refer the signatures for an expert opinion and that it is on account of the said reason that they could not take steps in furtherance of the same. I do not think that the aforesaid submission can be considered at this second appeal stage of the matter. As noticed above, Ext.A2 assignment deed

sought to be set aside in the suit is a document executed in the year 1971. The suit in the instant case was instituted about 25 years after the execution of the document. It is beyond dispute that in the meanwhile, several transactions took place in respect of the suit property. As noticed above, none of the transferees of the suit property are parties to the suit. In the said circumstances, I do not think that this is a fit case where indulgence is to be shown to the plaintiffs.

In the result, the second appeal fails and the same is, accordingly, dismissed *in limine*.

P.B.SURESH KUMAR, JUDGE.

smm