

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.N. RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

RFA.No. 328 of 2007 (C)

AGAINST THE JUDGMENT IN OS 510/2000 of I ADDL. SUB COURT, THRISSUR
DATED 23-12-2005

APPELLANT/2ND DEFENDANT:

SUMA MOHAN, W/O MOHAN,
KANDAMPILLY HOUSE, KOORKANCHERY,
THRISSUR.

BY ADV. SRI.K.S.BHARATHAN

RESPONDENTS/PLAINTIFFS 1 AND 2 & DEFENDANTS 1, 3 & 4:

1. SANTHOSH SUKUMAR, S/O DR.SUKUMARAN,
KANDAMPULLY HOUSE, KURIACHIRA, THRISSUR TALUK.
2. SAJAN SUKUMAR, S/O.DR.SUKUMARAN,
KANDAMPULLY HOUSE, BANK ROAD, CALICUT.
3. SHOBHA PRABHAKAR, W/O.PRABHAKARAN,
NADULAKANDI HOUSE, HOUSE NO.2/75, KARAPARAMBU
CALICUT DISTRICT.
4. SWAPNA SURESHCHANDRAN,
W/O.DR.SURESHCHANDRAN, VYTTILA, KOCHI.
5. MRS.SANDHYA PREMRAJ, W/O.DR.M.K.PREMRAJ,
"SARANG", NEAR TALAL SCHOOL, TALAL
KANNUR.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
ADV. SMT.R.RAJITHA
ADV. SRI.K.D.SREEVISAKH

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

R.F.A.No.328 OF 2007

DATED THIS THE 19th DAY OF FEBRUARY, 2015

JUDGMENT

ANIL K.NARENDRA , J.

The appellant is the second defendant in O.S.No.510 of 2000 on the file of the Court of the First Additional Subordinate Judge of Thrissur. The said suit was filed by respondents 1 and 2 herein seeking partition of the plaint schedule property. Respondents 3 to 5 herein are defendants 1, 3 and 4 in that suit. The court below by the judgment and decree dated 23.12.2005 held that the plaint schedule property is available for partition and that the plaintiffs are entitled to get 2/6 share from the plaint schedule property. In the result, the suit was decreed and a preliminary decree for partition was passed to the effect that the plaint schedule property will be divided into six equal shares and two such shares will be allotted to the plaintiffs and that the defendants are entitled to get 1/6 share each.

2. Challenging the judgment and decree of the court below, to the extent the claim made by the appellant/second defendant for reservation of the residential building standing on the plaint schedule property was declined, she has approached this Court in this R.F.A.

3. During the pendency of the above appeal, the parties have entered into a memorandum of understanding concerning the disputes regarding the plaint schedule property as well as in a partnership firm namely, Kashkand Enterprises in which they are partners. As per paragraphs 10 and 11 of the memorandum of understanding dated 21.2.2008 signed by all the parties, they have agreed for division of the plaint schedule property by metes and bounds or by sale of the property in which event, the appellant/second defendant has been given an option to purchase the plaint schedule property on payment of the same or more amount in cash than that offered by the intending stranger purchaser.

4. Based on the said memorandum of understanding, the learned counsel for the appellant has filed I.A.No.73 of 2015, seeking permission to withdraw this appeal. Later, pursuant to an order passed by this Court dated 12.2.2015 in that interlocutory application, the learned counsel for the first respondent, who is the first plaintiff in O.S.No.510 of 2000 has produced a notarised copy of the memorandum of understanding dated 21.2.2008, with a prayer that the same may be made part of the decree so that the terms of the settlement can be given effect to in the final decree proceedings.

5. We heard the arguments of the learned counsel for the appellant and also the learned counsel appearing for respondents 1, 2, 4 and 5. The learned counsel for both sides have agreed that this appeal can be disposed of in terms of the memorandum of understanding referred to above.

In the result, this appeal is disposed of modifying the judgment and decree of the court of the First Additional Subordinate Judge of Thrissur, in terms of paragraphs 10 and 11 of the memorandum of understanding dated 21.2.2008. A copy of memorandum of understanding dated 21.2.2008 shall be appended to this judgment.

It will be open to the parties to move appropriate applications before the court below to give effect to the terms contained in paragraphs 10 and 11 of the memorandum of understanding dated 21.2.2008 in the final decree proceedings.

Sd/-

P.N.RAVINDRAN, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

dsn