

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

RFA.No. 498 of 2007 ()

**AGAINST THE ORDER/JUDGMENT IN IA 692/2004 IN OS 71/1995 of PRINCIPAL SUB
COURT, PARAVUR DATED 26-02-2007**

APPELLANTS/DEFENDANTS 3 TO 9::

1. ELEZABATH, W/O.JOSEPH, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
2. ALEX, S/O.JOSEPH, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
3. PHELIX, S/O.JOSEPH, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
4. HELAN, D/O.JOSEPH, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
5. JESSY, D/O.JOSEPH, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
6. JIJI, S/O.JOSEPH, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
7. JANAK, S/O. JOSEPH, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.
8. SABEENA, W/O.MATHEW VARGHESE,
KALLOOR VEETIL, KOTTUVALLY VILLAGE, PARAVUR TALUK
ERNAKULAM DISTRICT.

BY ADV. SRI.T.K.RADHAKRISHNAN

RESPONDENTS/PLAINTIFFS::

1. SMT.THRESSIA, W/O.CHEEKKU,CHULLIKKATTU HOUSE,
KOONAMMAVU DESOM, KOTTUVALLY VILLAGE, PARAVUR TALUK
ERNAKULAM DISTRICT.
2. ANNAMMA, W/O.SEBASTIAN,
CHAKKALAKKAL VEEDU, KARTHEDOM DESOM
ELAMKUNNAPUZHA VILLAGE, KOCHI TALUK
ERNAKULAM DISTRICT. [EXPIRED].

3. AMPLONY, W/O.FRANCIS, NLLAVARATH VEETIL
POONITHURA DESOM, POONITHURA VILLAGE, KANAYANOR TALUK
ERNAKULAM DISTRICT.
4. MERY, W/O.PETER, PARAPPILLY VEETIL,
ERNAKULAM VILLAGE, KANAYANNUR TALUK
ERNAKULAM DISTRICT.
5. GOURIES, S/O. PAILY, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT - EXPIRED.
6. K.P.VARGHESE, S/O. PAILY, KANNOTHU VEEDU,
ELOOR VILLAGE, PARAVUR TALUK, ERNAKULAM DISTRICT.

*** ADDL. RESPONDENTS IMPEADED**

ADDL.R7 :- KUNJAPPAN, AGED 56, S/O.ANNAMMA,
CHAKKALAKKAL VEEDU, KARTHEDOM DESOM,
ELAMKUNNAPUZHA VILLAGE, KOCHI TALUK,
ERNAKULAM DISTRICT.

ADDL.R8 :- CHRISTOPHER, AGED 53, S/O/ANNAMMA, - DO - DO -

ADDL.R9 :- BENNY, AGED 50, S/O/ANNAMMA, - DO - DO -

ADDL.R10 :- SAJAN, AGED , S/O/ANNAMMA, - DO - DO -

ADDL.R11 :- JUBIN, AGED 38, S/O/ANNAMMA, - DO - DO -

*LEGAL REPRESENTATIVES OF DECEASED 2ND RESPONDENT ARE IMPEADED
AS ADDL.R7 TO R11 AS PER ORDER DTD.22/01/2014 IN IA 2736/2011.

* DEATH OF R5 RECORDED AS PER ORDER DATED 22.1.14 IN IA 2333/12.

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.
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R.F.A.No.498 of 2007
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Dated this the 15th day of January, 2015

JUDGMENT

The final decree passed as per order dated 26.2.2007 on I.A.No.692 of 2004 in O.S.No.71 of 1995 on the file of the Court of the Subordinate Judge of North Paravur is under challenge in this appeal. Defendants 3 to 10 in the suit are the appellants.

2. Partition was sought in the suit in respect of three items of immovable properties, of which plaint A schedule property was a dry land measuring 61.18 cents, plaint B schedule property was a wet land measuring 58 cents and plaint C schedule property was again a dry land measuring 14 cents. As per the preliminary decree passed in the suit, the said properties were ordered to be divided into seven equal shares and the appellants who are defendants 3 to 10 were held entitled to 1/7th of such share.

3. After the preliminary decree, I.A.No.692 of 2004 was filed by the legal representatives of the third plaintiff, seeking orders to pass a final decree. In the final decree application, the court below appointed a Commissioner and based on the report submitted by

the Commissioner, the plaint A schedule property was divided into five portions of which the appellants were allotted plot No.2. The whole plaint B schedule property was allotted to the first defendant and the whole plaint C schedule property was allotted to the second defendant. In the report filed by the Advocate Commissioner appointed in the final decree proceeding, the plaint A schedule property was valued at Rs.10,000/- per cent, the plaint B schedule property was valued at Rs.2,000/- per cent and plaint C schedule property was valued at Rs.8,500/- per cent. According to the appellants, the valuation of plaint B and C schedule properties was inadequate.

4. It is pointed out by the learned counsel for the appellants that defendants 3 to 8 objected the valuation of plaint B and C schedule properties made by the Advocate Commissioner by filing objection to the report filed by him. The relevant portion of the objection filed to the report of the Advocate Commissioner by the appellants which was made available to me at the time of hearing, reads thus:

"3. The commissioner has reported that respondents 5 to 8 reside in the house shown in "A" schedule (1) of the sketch. It is submitted that 3rd respondent and the wife and children of the 5th respondent is also residing in that house and

requested the commissioner to allot the same to the respondents 3 to 10 because all other petitioners/respondents have their own houses. Further more, the commissioner arbitrarily adopted a palpably disproportioned valuation to the "B" and "C" schedule without any the reason. By any stretch of imagination the said plot do command much more worth than what has been stated by the commissioner. Therefore a higher value should have been given to "B" and "C" schedule properties."

It is also pointed out by the learned counsel for the appellants that in view of the inadequate valuation of plaint B and C schedule properties, the appellants had filed an application as I.A.No.3799 of 2006 seeking orders permitting them to examine the Commissioner to discredit his report. The grievance highlighted in this appeal by the counsel for the appellants is that the impugned final decree has been passed by the court below without considering the objection filed by the appellants to the report of the Advocate Commissioner and the application filed by them seeking permission to examine the Advocate Commissioner.

5. Though notice was taken out to the respondents, there is no appearance for them.

6. A reading of the impugned order would indicate that the court below was proceeding as if there is no objection at all to the report of the Advocate Commissioner. The fact that an application

has been filed to examine the Advocate Commissioner appointed in the proceeding is also not seen taken note of while passing the impugned order.

In such circumstances, the impugned order is set aside and the matter is remitted to the court below for fresh disposal of I.A.No.692 of 2004. Needless to say that this being a suit for partition of the year 1995, the court below shall dispose of the final decree application as expeditiously as possible, at any rate, within a period of six months from today.

Sd/-

**P.B.SURESH KUMAR
JUDGE**

vpv