

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

OP(C).No. 293 of 2015 (O)

OS 45/2010 of SUB COURT, VADAKARA

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PETITIONER(S):

MUNNOOL MAMMU HAJI, 70 YEARS,
S/O.MOIDEEN, BUSINESS, CHERAPURAM AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SMT.K.LASITHA

RESPONDENT(S):

1. PANNIYULLAKANDY KUNHAMI,
W/O.KUNHABDULLA, KOVUMMAL HOUSE, KUTTYADI AMSOM,
OORATH DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT.
2. SON, KOVUMMAL AMMAD, DO..DO..DO..DO..
3. SISTER KOVUMMAL SULEKHA, DO..DO..DO..DO..
4. SISTER KOVUMMAL SAINABA , DO..DO..DO..DO..
5. BROTHER KOVUMMAL MUSTHAFA, DO..DO..DO..DO..
6. SISTER KOVUKKAL KUNHIPATHU,
KORANGATTU POOZHIKKUNNAM HOUSE,
RAIROTH AMSOM KADAVOOR DESOM, POST THAMARASSERY,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.
7. SISTER KOVUMMAL SAKKENA,
KUTTYADI AMSOM, OOROTH DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.
8. BROTHER SAMEER KOVUMMAL, DO..DO..DO..DO..
9. MUKKATH KOLLANDY ASYA HAJJUMMA,
D/O.ALIKUTTY, KUTTYADI AMSOM,
THONDIPOYIL DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.
10. ASYA, W/O.MOIDU,
VELUTHAPARAMBATH, DO..DO..DO..DO..

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11. DAUGHTER MUKKATH SHAMEENA, DO..DO..DO..DO..
12. BROTHER MUKKATH ALI KUTTY,
VELUTHAPARAMBATH, DO..DO..DO..DO..
13. BROTHER MUKKATH ARIF, DO..DO..DO..DO..
14. BROTHER MUKKATH SHAFEEQUE, DO..DO..DO..DO
15. PUNATHIKIANDY NAZAR,
S/O.MOOTHAN, VELAM AMSOM, KURICHAKAM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.
16. PUNATHIKANDY PATHOOTTY,
W/O.MOIDEEN, DO..DO..DO..DO
17. JAMEELA, D/O.MOOTHAN,
KUTTYADI AMSOM, VALAYANNUR DESOM,
VATAKARA TALUK KOZHIKODE DISTRICT.
18. KOVILLATH MAMMI, D/O.MOOTHAN,
KUTTYADI AMSOM, THONDIPOYIL DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.
19. PUTHAN PEEDIKAYIL FOUSIYA,
D/O.MOOTHAN, NARIPPATTA AMSOM,
CHEEKKUNNUMMAL DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.
20. KUNNOTH SAMEENA,
D/O.MOOTHAN, PATHIYARAKKARA AMSOM DESOM,
VATAKARA TALUK, KOZHIKODE DISTRICT.
21. PUTHUKKUDI MYUARIKKANDY ABDUL NAZEER,
S/O.KUNHABDULLA HAJI, FIELD HOUSE,
KUTTYADI AMSOM, THONDIPOYIL DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT
22. O.P.MUNEER,
S/O.KUNHABDULLA, OTHAYOTH HOUSE,
POST TALYIL, VATAKARA TALUK, KOZHIKODE DISTRICT.
23. MANIKKOTH ABDULLA,
KOTTAKKAD HOUSE, POST KUTTYADI,
VATAKARA TALUK, KOZHIKODE DISTRICT.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1 - TRUE COPY OF THE PLAINT IN O.S.45/2010 PENDING BEFORE SUB COURT
VATAKARA.**

**EXT.P2 - TRUE COPY OF THE I.A.NO.1032/2014 IN OS NO.45/2010 PENDING BEFORE
SUB COURT VATAKARA.**

**EXT.P3 - TRUE COPY OF THE ORDER PASSED IN I.A.NO.1032/2014 IN OS NO.45/2010
OF THE SUB JUDGE, VATAKARA.**

**EXT.P4 - TRUE COPY OF THE ORDER IN IA NO.32/2014 IN OS NO.45/2010 PENDING
BEFORE THE SUB COURT, VATAKARA.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms^v/

P.BHAVADASAN, J.

Original Petition (Civil) No.293 OF 2015

Dated this the 3rd day of February, 2015.

J U D G M E N T

Aggrieved by the order dated 09.12.2014 in I.A.No.1032/2014 in O.S.No.45/2010, petitioner before the court below has come up with this original petition under Article 227 of the Constitution of India.

2. The petitioner as plaintiff instituted the above suit for partition. The respondents entered appearance and contested the matter. It is stated that there is some dispute regarding the measurement of the property and the extent of property that is available for partition. In the suit, the petitioner moved I.A.No.32/2014 for issuance of a commission. That application was considered on merits and the court below finding that there is no justification for issuing a commission, dismissed the same. Later, the suit was dismissed for default. Subsequently it was restored back to file. Thereafter when the suit was included in the list for trial, the petitioner came forward with the present

application namely, I.A.No.1032/2014 in O.S.No.45/2010 seeking the very same relief which was declined on an earlier occasion. The court below rightly observed that second petition for the very same relief will not lie and it dismissed the petition. The said order is under challenge.

3. Learned counsel appearing for the petitioner pointed out that it is absolutely necessary that a commission report is made available in the case for proper adjudication of the issues involved in the suit especially in the light of the nature of contentions raised by the respondents. It is also pointed out that the court below was not justified in relying on the earlier order and declining to grant an order in the present application for issuance of a commission. At any rate, according to the learned counsel, in order to avoid a future controversy, it is only proper that commission report be remitted to Commissioner.

4. Though the argument may look attractive at the first blush, it is without any basis whatsoever. Partition suit is of the year 2010. The first application for issuance of a commission was moved in 2014. That application was contested and it was

disposed of on merits and finding that there is no need for issuance of a commission, said application was dismissed.

5. True, subsequently, suit was also dismissed. However, that suit was restored back to file and that means the order passed in the earlier commission application got revived and when that order is in force, as rightly noticed by the court below, the petitioner could not have filed another application for the very same relief. The court below has also taken care to see whether there is any change in the circumstances so as to warrant issuance of a commission. It found no such circumstance existed and there was no new facts or circumstance brought up by the petitioner in praying for issuance of a commission. The court below was perfectly justified in dismissing the petition.

The original petition is without merits and it is accordingly dismissed.

Sd/-

P.BHAVADASAN
JUDGE

smp