

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

OP(C).No. 443 of 2015 (O)

**I.A.NO.2994/2014 IN O.S.NO.408/2009 OF PRINCIPAL MUNSIF'S COURT ,
ALAPPUZHA**

PETITIONER(S) :

**BOSS, AGED 67 YEARS,
S/O.VELAPPAN, PUTHEN PARAMBIL, THOTTUVATHALA,
ALAPPUZHA.**

BY ADV. SRI.P.SHANES METHAR

RESPONDENT(S) :

- 1. SUGUNAN, AGED 70 YEARS,
S/O.VELAPPAN, PUTHEN VEEDU, THOTTUVATHALA,
KAINAKARY, ALAPPUZHA- 688 124.**
- 2. SANTHAMMA, AGED 75 YEARS,
D/O.VELAPPAN, PUTHEN VEEDU, THOTTUVATHALA,
KAINAKARY, ALAPPUZHA- 688 124.**
- 3. LALITHAMMA, AGED 64 YEARS,
D/O.VELAPPAN, PARAPATTIL VEEDU, PULINCUNNU,
ALAPPUZHA- 688 002.**
- 4. RETNAMMA, AGED 78 YEARS,
D/O.VELAPPAN, VRINDA BHAVANAM, KANJIKUZZHI,
ALAPPUZHA- 688 026.**
- 5. PRASANNA, AGED 62 YEARS,
W/O.PONNAPPAN, KIZHAKKEVELI, KALATH,
ALAPPUZHA- 688 013.**
- 6. SYAMALAN, AGED 72 YEARS,
D/O.VELAPPAN, PRASANNALAYAM, THIRUVAMBADY,
ALAPPUZHA- 688 132.**

**BY ADVS. SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PRELIMINARY DECREE IN O.S.NO.408/2009 ON THE FILE OF PRINCIPAL MUNISFF COURT, ALAPPUZHA.
- P2: TRUE COPY OF THE DECREE IN O.S.NO.39/2008 ON THE FILES OF PRINCIPAL MUNISFF COURT, ALAPPUZHA.
- P3: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A.NO.2214/2013 IN O.S.NO.408/2009 ON THE FILE OF THE PRINCIPAL MUNISFF'S COURT, ALAPPUZHA.
- P4: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN I.A. NO.2214/2013 IN O.S.NO.408/2009 ON THE FILE OF THE PRINCIPAL MUNISFF'S COURT, ALAPPUZHA.
- P5: TRUE COPY OF I.A.NO.2996/2004 IN O.S.408/2009 ON THE FILE OF PRINCIPAL MUNISFF COURT, ALAPPUZHA
- P6: TRUE COPY OF THE OBJECTION IN I.A.NO.2996/2014 IN O.S.NO.408/2009.
- P7: TRUE COPY OF THE ORDER IN I.A.NO.2996/2014 IN O.S.NO.408/2009 ON THE FILE OF PRINCIPAL MUNISFF COURT, ALAPPUZHA.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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O.P.(C). No.443 of 2015

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Dated this the 24th day of June, 2015

J U D G M E N T

Exhibit P7 order, by which a Commissioner has been appointed in the proceedings for passing the Final Decree, is under challenge.

2. Admittedly, the petitioner is in possession of the building in the property and he is residing therein. In relief No.3 of the preliminary decree, it has been directed that *“The Commission so appointed shall give consideration to possession as far as possible.”* In Exhibit P7 order the court below has taken a view that the property including the residential building is ordered to be partitioned.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. No doubt, the building is also available for partition. At the same time, while allotting the property in which the building is situated, as far as practicable, that shall be allotted to the share of the petitioner herein, as he is residing in the building. That is the reason why the court below has given a direction in the preliminary decree that the Commissioner shall decide the matter of division as far as practicable, based on possession. Here the petitioner is ready and willing to part with the excess amount payable to other sharers, for getting the building allotted to his share.

5. When it is a residential building and it has been proved that the petitioner is residing in the building, as far as practicable, the said portion of the property in which the building is situated shall be allotted to the share of the petitioner. The Commissioner appointed by the court below shall take note of that aspect and make a division of the property. In case of such allotment, if possible, excess extent of the property that has to be given to the other sharers for equalization of the shares shall also be decided

by the Commissioner. In case, the excess extent of property can be allotted to the other sharers for equalization of the shares is possible, the Commissioner shall adopt such method. In case it is not possible, then the Commissioner shall fix the amount to be paid by the petitioner to other sharers for equalization of the shares. Both excess extent as well as amount payable for equalization, can also be adopted. Exhibit P7 order passed by the court below stands modified to the above effect.

This Original Petition (Civil) is disposed of accordingly.

Sd/-

B.KEMAL PASHA
JUDGE