

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

OP(C).No. 481 of 2015 (O)

(OS 141/1985 of SUB COURT, KOZHIKODE)

PETITIONERS:

1. K.P.MUTHULAKSHMI AMMA, AGED 82 YEARS
D/O. K.P.SREEDEVI AMMA, SANKARALAYAM
PANNIYANKARA AMSOM DESOM, KOZHIKODE TALUK.
2. K.P.RAJAGOPALAN AGED 74 YEARS
S/O. LATE K.P.SREEDEVI AMMA, SREELAKSHMI, NELLIKKODE
KOZHIKODE TALUK - 673 017.

BY ADV. SRI.S.R.DAYANANDA PRABHU

RESPONDENTS:

1. RADHA KRISHNANUNNI, AGED 67 YEARS
W/O. LATE KRISHANANUNNI, JAYASREE, SIVAPURI COMPOUND
VAYANAD ROAD, KOZHIKODE.
2. JAYASREE, AGED 42 YEARS
D/O. LATE KRISHANANUNNI, JAYASREE, SIVAPURI COMPOUND
VAYANAD ROAD, KOZHIKODE.
3. RAJASREE, AGED 40 YEARS
D/O. LATE KRISHANANUNNI, JAYASREE, SIVAPURI COMPOUND
VAYANAD ROAD, KOZHIKODE.
4. JAYARAM, AGED 45 YEARS
D/O. LATE KRISHANANUNNI, JAYASREE, SIVAPURI COMPOUND
VAYANAD ROAD, KOZHIKODE.
5. REMA JANARDHANAN, AGED 65 YEARS
W/O. LATE DR.K.P.JANARDHANAN, FLORICAN ROAD
P.O.VENGERI, KOZHIKODE - 673 010.
6. DR.RAJIV JANARDHANAN, AGED 42 YEARS
S/O. LATE DR.K.P.JANARDHANAN, FLORICAN ROAD
P.O.VENGERI, KOZHIKODE - 673 010.

R1-R6 BY ADV. SRI.K.S.RAJESH
ADV. SRI.T. SETHUMADHAVAN.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- P1 - A TRUE COPY OF JUDGEMENT DT. 07.12.2000 IN AS NO. 41/90 OF HON'BLE HIGH COURT OF KERALA.
- P2 - A TRUE COPY OF JUDGMENT DT. 12.2.2014 IN OS NO. 141/1985 OF SUB COURT KOZHIKODE.
- P3 - A TRUE COPY OF PRELIMIARY DECREE DT. 12.2.14 PASSED IN OS NO. 141/85 OF SUB COURT KOZHIKODE.
- P4 - A TRUE COPY OF IA NO. 2618/14 DT. 05.7.14 IN OS NO. 141/85 OF SUB COURT KOZHIKODE FILED BY THE PETITIONERS.
- P5 - A TRUE COPY OF IMPUGNED ORDER DT. 28.11.14 IN F.D.IA 1618/14 IN OS NO. 141/85 OF SUB COURT KOZHIKODE.

RESPONDENTS' EXHIBITS: NIL.

// True copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.481 OF 2015

Dated this the 24th day of February, 2015.

J U D G M E N T

Indeed strange is the method adopted by the court below in the case. The less said the better.

2. Partition suit, after preliminary decree, was compromised between the parties in which they accepted that 10 cents of property has already been sold to the 5th defendant who died during the pendency of the suit. His legal heirs were not impleaded. However, parties in their compromise accepted the sale in favour of the 5th defendant and they agreed to exclude that portion from partition. In terms of the compromise, they moved the court below for passing final decree. Strangely enough, court below doubts the identity of the property about which parties had no doubt at all. The parties were certain about

the identity of the property regarding which partition was sought for.

3. On going through the order of the court below, one fails to understand how the court had entered upon a doubt regarding identity of the property. Probably, the court was carried away by the fact that 10 cents of property was not available for partition. But the compromise itself is clear about the said fact. Equally fallacious is the observation of the court below that for passing passing decree, it is absolutely necessary that legal heirs of the 5th defendant be brought on the party array. Here again, we need to refer to the compromise. In the compromise, parties to the compromise who are parties to the suit have agreed that 10 cents of property which had already been sold to the 5th defendant need not be a subject matter for partition and it shall be excluded. Under such circumstances, no relief is sought for as against the 5th defendant and his rights are not affected. One fails to understand the necessity for impeaching the legal heirs of the 5th defendant which is not at all a controversy between the parties.

This Court is unable to sustain the order of the court below. It is accordingly set aside and the matter is remanded to the trial court for passing of final decree in terms of the compromise entered into between the parties.

Sd/-

**P.BHAVADASAN
JUDGE**

smp