

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

OP(C).No. 646 of 2015 (O)

(OS 155/2003 of SUB COURT, KOZHIKODE)

PETITIONER:

ARJUN.K, AGED 21 YEARS,
S/O. BABU, KAVUMKAL HOUSE, PANNIYANKARA AMSOM & DESOM
KOZHIKODE.

BY ADV. SRI.LUIZ GODWIN D'COUTH

RESPONDENTS:

1. ARUNAPRIYA, AGED 33 YEARS
D/O. DAMODARAN MASTER, AYILALATH VAZHAYOOR VILLAGE
ERNAD TALUK - 673 633.
2. BABU, S/O. KAVUMKAL VASU, AGED 61 YEARS,
KAVUMKAL HOUSE, PANNIYANKARA AMSOM & DESOM,
KOZHIKODE - 673 001.

R1 BY ADV. SRI SANEESH KUMAR (CAVEATOR)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 646 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

- P1 - A TRUE COPY OF THE FINAL JUDGMENT DT. 26.10.13 IN
OS NO. 115/2003 ON THE FILE OF THE SUB COURT, KOZHIKODE.
- P2 - A TRUE COPY OF EA NO. 598/14 DT. 03.7.14.
- P3 - A TRUE COPY OF THE EA NO. 600/14 DT. 03.7.14.
- P4 - A TRUE COPY OF THE COUNTER DT. 10.7.14 SUBMITTED BY THE 1ST
RESPONDENT.
- P5 - A TRUE COPY OF THE ORDER DT. 23.2.15 IN EA NO 600/14.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.646 OF 2015

Dated this the 10th day of March, 2015.

J U D G M E N T

Under challenge is Ext.P5 order whereby the court below declined to issue a commission as sought for by the claim petitioner.

2. The suit was one for partition in which preliminary decree was passed and final decree was also passed. A Commissioner who was deputed for effecting partition, partitioned the property and delivery is to be effected. While things stood so, petitioner has filed a claim petition pointing out that there is a temple in the property and that is to be kept in common and that temple is not liable to be partitioned.

3. It may at once be noticed that the claim petitioner is the son of a sharer who suffered a decree in partition and that person has no grievance that there is a temple in the property and that is to be kept in common.

4. Whatever that be, that matter need not be gone into in these proceedings because it is a matter to be decided in the claim petition filed by the petitioner which is being proceeded with. This Court finds no grounds to interfere with the impugned order. The Commissioner has already partitioned the property. Even otherwise the petitioner can adduce further evidence to establish his claim.

There is no irregularity, impropriety or illegality in the order warranting interference under Article 227 of the Constitution of India.

This original petition is dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp