

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

OP(C).No. 824 of 2015 (O)

(I.A.NO.4352/2008 IN O.S.342/1992 OF ADDITIONAL MUNSIFF'S COURT,
KOZHIKODE - I)

PETITIONER:

SUSHEEL KUMAR, AGED 47 YEARS
S/O. AYYAPPAN @ KARUNAKARAN,
PUTHIYOTTIL HOUSE, KOTTOOLI AMSOM AND DESOM
KOZHIKODE TALUK.

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)

SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.N.DEEPA

RESPONDENTS:

1. K.T. RADHA
D/O. KALUR THOTTULI UNICHOYI, VILLYGAL KOTTAPARAMBIL,
CHEVAYOOR AMSOM & DESOM, KOZHIKODE TALUK & DIST.-673001.
2. KUNHIPERACHAN, S/O. KALUR THOTTULI UNICHOYI,
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
3. REMA DEVI, W/O. KUNHIPERACHAN,
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
4. SHERIN, D/O. KUNHIPERACHAN,
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
5. SHAJU, S/O. KUNHIPERACHAN,
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
6. YADHAVAN, S/O. KUNHIPERACHAN, R/AT-DO-
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
7. K.T. AYYAPPAN ALIAS KARUNAKARAN,
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.

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8. SANTHA, W/O. K.T. AYYAPPAN ALIAS KARUNAKARAN
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
9. AJITHAKUMARI, D/O. K.T.AYYAPPAN ALIAS KARUNAKARAN
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
10. SANIL KUMAR, S/O. K.T.AYYAPPAN ALIAS KARUNAKARAN
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
11. RAJITHA KUMARI, D/O.K.T.AYYAPPAN ALIAS KARUNAKARAN
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
12. SAJITHA KUMARI, D/O.K.T.AYYAPPAN ALIAS KARUNAKARAN
PUTHIYOTTIL HOUSE, KOTTULI AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT - 673001.
13. K.T.LEELA, W/O. ALAMBATTA SOMAN,
'SANTHI VIHAR', KADALUNDI AMSOM & DESOM,
KOZHIKODE TALUK.
14. THAYIL JAYAPALAN, S/O. THAYIL GOVINDAN
PADIKKALKANDI PARAMBIL, KOTTULI AMSOM & DESOM
KOZHIKODE TALUK-673001.
15. SANTHA, W/O. THAYIL JAYAPALAN, PADIKKALKANDI PARAMBIL
KOTTULI AMSOM AND DESOM, KOZHIKODE TALUK-673001.
16. MARIYIL DATHANL, S/O. MARIYIL KRISHNAN NAIR,
PADIKKALKANDI PARAMBIL, KOTTULI AMSOM & DESOM
KOZHIKODE TALUK-673001.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) 'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE JUDGMENT IN R.S.ANO.945/2008 DATED
29.10.2008.

EXHIBIT P2: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
AS I.A.NO.4352/2008 IN O.S.NO.342/1992 DATED 25.11.2008 BEFORE THE
ADDITIONAL MUNSIFF COURT-I, KOZHIKODE.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

P. BHAVADASAN, J.

O.P.(C) No.824 of 2015

Dated this the 25th day of March, 2015.

JUDGMENT

As per Ext.P1 judgment in R.S.A.No.945 of 2008, the right of the petitioner to the share in the property seems to have been remained. However, the petitioner herein was not granted a share by the trial court by filing preliminary decree. In the first appeal, filed by some of the parties, the petitioner did not agitate the claim regarding the non-allocation of share to him. He filed a second appeal thereafter, complaining about the non-allocation of share to him. This Court declined to interfere with the preliminary decree passed earlier and held that there is no substantial questions of law within the meaning of Sec.100 of C.P.C and dismissed the second appeal. However without dismissing the second appeal, this Court observed that this will not preclude the petitioner from seeking a supplementary preliminary decree in case he is entitled to do so. Based on Ext.P1, the petitioner filed I.A.No.4352 of 2008

in O.S.No.342 of 1992 seeking for passing a supplementary preliminary decree. The complaint is that the said application is pending for a long time and no finality is being reached and the petitioner is put to considerable loss and injury.

2. In the nature of the order that is proposed to be passed, it is felt that notice to the respondents is unnecessary.

This petition is allowed and the Additional Munsiff Court, Kozhikode-I is directed to take up I.A.No.4352 of 2008 in O.S.No.342 of 1992 and dispose it of in accordance with law, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

**Sd/-
BHAVADASAN
JUDGE**

Scl.