

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

OP(C).No. 2831 of 2013 (O)

OS 121/2010 of MUNSIF COURT, OTTAPPALAM

PETITIONER(S):

YOUSAF, AGED 58 YEARS,
S/O.AAMAKATTUPARAMBIL DECEASED MAMMU,
PULLUNDASSERI AMSOM, DESOM, OTTAPALAM TALUK.

BY ADV. SRI.K.RAVI (PARIYARATH)

RESPONDENT(S):

1. KUNHEERUMMA, AGED 69 YEARS,
W/O.DECEASED VEERANKUTTY,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM, DESOM,
OTTAPALAM TALUK- 679101.
2. MOIDEEN BAVA, AGED 47 YEARS,
S/O.DECEASED VEERANKUTTY,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM, DESOM
OTTAPALAM TALUK- 679101.
3. BEEVIKUTTY UMMA, AGED 41 YEARS,
D/O.DECEASED VEERANKUTTY,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM, DESOM,
OTTAPALAM TALUK- 679101.
4. FATHIMAKUTTY UMMA, AGED 39 YEARS,
D/O.DECEASED VEERANKUTTY,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM, DESOM,
OTTAPALAM TALUK- 679101.
5. SELMA UMMA, AGED 35 YEARS,
D/O.DECEASED VEERANKUTTY,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM, DESOM,
OTTAPALAM TALUK 679101.

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6. SAIBU, AGED 33 YEARS,
S/O.DECEASED VEERANKUTTY,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM, DESOM,
OTTAPALAM TALUK- 679101.
7. PATHUMA, AGED 62 YEARS,
W/O.AAMAKATTUPARAMBIL DECEASED MUHAMMED,
AAMAKATTUPARAMBIL,
PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK.- 679101.
8. BASHEER, S/O.7TH RESPONDENT, AGED 42 YEARS
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM
DESOM OTTAPALAM TALUK. 679101.
9. LAILA, D/O. 7TH RESPONDENT, AGED 40 YEARS
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.
10. NAZER, S/O. 7TH RESPONDENT, AGED 38 YEARS,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.
11. RAZACK, S/O. 7TH RESPONDENT, AGED 36 YEARS,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.
12. ZEENATH, D/O.7TH RESPONDENT, AGED 34 YEARS,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.
13. KUNHACHU,
W/O.AAMAKATTUPARAMBIL DECEASED UMMER
PULLUNDASSERI AMSOM, DESOM OTTAPALAM TALUK- 679101.
14. SUHARA, D/O.KUNHACHU, AGED 33 YEARS,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.
15. RASHEED, S/O.KUNHACHU, AGED 29 YEARS,
AAMAKATTUPARAMBIL, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.
16. BEEPATHUMMA, , AGED 67 YEARS,
D/O.AAMAKATTUPARAMBIL MAMMU, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.
17. THITHUMMAKUTTY UMMA, AGED 67 YEARS,
D/O.AAMAKATTUPARAMBIL MAMMU, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.

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18. KHADHEEJA UMMA, AGED 59 YEARS,
D/O.AAMAKATTUPARAMBIL MAMMU, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.

19. HASSAN, AGED 68 YEARS,
S/O.AAMAKATTUPARAMBIL MAMMU, PULLUNDASSERI AMSOM
DESOM, OTTAPALAM TALUK- 679101.

R19 BY ADV. SRI.PJAYARAM

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE IN O.S.NO.121/2010 ON THE FILE OF THE MUNSIF COURT OTTAPALAM DATED 6-4-10
- EXT.P2 - TRUE COPY OF THE WRITTEN STATEMENT FILED AT THE INSTANCE OF THE 19TH RESPONDENT IN O.S.NO.121/2010 ON THE FILE OF THE MUNSIF COURT OTTAPALAM DATED 15-12-10
- EXT.P3 - TRUE COPY OF THE WORK MEMO FILED AT THE INSTANCE OF THE PETITIONER IN O.S.NO.121/10 DATED 18-7-12
- EXT.P4 - TRUE COPY OF THE COMMISSIONER'S REPORT AND PLAN FILED IN I.A.1179/11 IN O.S.NO.121/2010 ON THE FILE OF THE MUNSIF COURT OTTAPALAM DATED NIL.
- EXT.P5 - TRUE COPY OF THE OBJECTIONS FILED AT THE INSTANCE OF THE PETITIONER TO COMMISSIONER'S REPORT AND PLAN FILED IN I.A.1179/11 IN O.S.NO.121/2010 ON THE FILE OF THE MUNSIF COURT OTTAPALAM DATED 19-11-12.
- EXT.P6 - TRUE COPY OF THE OBJECTIONS FILED AT THE INSTANCE OF THE 19TH RESPONDENT TO COMMISSIONER'S REPORT AND PLAN FILED IN I.A.1179/11 IN O.S.NO.121/2010 ON THE FILE OF THE MUNSIF COURT OTTAPALAM DATED 21-11-12.
- EXT.P7 - TRUE COPY OF THE I.A.3073/12 IN O.S.NO.121/2010 ON THE FILE OF THE MUNSIF COURT, OTTAPALAM FILED AT THE INSTANCE OF THE PETITIONER TO SET ASIDE COMMISSIONER'S REPORT AND PLAN DATED 19-11-12.
- EXT.P8 - TRUE COPY OF THE ORDER PASSED BY THE LEARNED MUNSIF OTTAPALAM IN I.A.3073/12 IN O.S.NO.121/2010 DATED 26-6-13

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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B. KEMAL PASHA, J.

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O.P.(C) No.2831 of 2013
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Dated this the 30th day of July, 2015

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The main contesting respondent is the 19th respondent. Notice to others is dispensed with.

2. An application to set aside the Commissioner's report and plan was filed as IA No.3073/2012 in OS No.121/2010. The suit is one for partition. The claim of the plaintiff is that plaint B schedule property presently in the possession of the 19th defendant is the property which has to be partitioned. According to the plaintiff, plaint B schedule property is the property now available for partition.

3. The 19th defendant claims that the said property was sold to him by his father through a sale deed. The identity of plaint B schedule property is not in question at all. There is no dispute with regard to the identity of plaint B schedule property. In such a context, the Commissioner's

report and plan are not liable to be set aside.

4. After all, it is a suit for partition. Even the preliminary decree has not been passed. The identity of plaint B schedule property is not in question. Matters being so, Ext.P8 order is not liable to be interfered with. It is a suit of 2010. The parties have to co-operate with the disposal of the suit as expeditiously as possible.

In the result, this O.P.(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/30/07

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PA to Judge