

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

OP(C).No. 1004 of 2015 (O)

OS 550/2010 OF PRINCIPAL SUB COURT,KOLLAM

PETITIONER(S)/2ND DEFENDANT:

K. SYAMAPRASAD, AGED 59 YEARS,
S/O.LATE.P.KUMARAN, SYAM NIVAS, THAZHAM MIDDLE,
CHATHANNOOR, KOLLAM.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT(S)/PLAINTIFFS AND DEFENDANTS 1, 3 AND 4:

1. K.MOHANDAS, AGED 57 YEARS,
S/O.LATE P.KUMARAN, 'SWARAKA', HOUSE NO.6,
MAHAVISHNU NAGAR, THIRUMULLAVARAM, KOLLAM-691 012.
2. DR.K.K.MURALEEDHARAN, AGED 55 YEARS,
S/O.LATE P.KUMARAN, AHALYA HOSPITAL,
POST BOXNO.2419 ABUDABI, U.A.E.
3. WG.CDR.K.K.VIMAL KUMAR AT NO.26 ED,
AIRFORCE, VIMAPURA.P.O, BANGALORE-960 017.
4. DR.SREEKUMARY LIGIN,
W/O.DR.LIJIN, OASIS, VIKAS NAGAR, 137,
PATTATHANAM P.O, VADAKKEVILA VILLAGE,
KOLLAM-691 021.
5. K.S.SREEDEVI RAJ, W/O.RAJU, AGED 53 YEARS,
'USHUS', NEAR KSEB OFFICE, CHATHANNOOR P.O.,
MEENAD VILLAGE, KOLLAM-691 572.
6. K.S.GEETHAKUMARI, W/O.DR.SURESH, AGED 51 YEARS,
MARATHEZHATH, KAIPAMANGALAM,
P.O.ARAVUSALA, KAIPPAMANGALAM VILLAGE, THRISSUR.

BY ADV. SRI.B.KRISHNA MANI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-06-2015,
ALONG WITH OPC. 1026/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

msv/

OP(C).No. 1004 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE PLAINT OS 550/2010- SUB COURT KOLLAM.
- EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
2ND DEFENDANT.
- EXHIBIT P3: TRUE COPY OF THE COMMISSIONER APPLICATION PETITION
DTD.19.9.2014.
- EXHIBIT P.4: TRUE COPY OF THE COPY OF THE OBJECTION FILED BY THE
PETITIONER TO IA 1858/2014.
- EXHIBIT P.5: TRUE COPY OF THE ORDER IN IA.1858/2014 IN O.S.550/2010
DATED 20.3.2015.
- EXHIBIT P.6: TRUE COPY OF THE ORDER PASSED IA.2525/2015 DATED 20.3.2015 IN
O.S.550/2010.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
O.P.(C) Nos.1004 & 1026 of 2015
.....

Dated this the 9th day of June, 2015

J U D G M E N T

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In a suit for partition, the 2nd defendant has claimed independent rights over the movables in the building. The plaintiffs have revealed before the court below that they are not claiming any right over the said movables of the 2nd defendant. The 2nd defendant, who is the petitioner herein, wanted to get an inventory prepared in respect of the movables through a Commissioner. The court below has dismissed IA.1858/2014 through Ext.P5 order.

2. It seems that the plaintiffs have filed IA.2525/2015 before the court below in the suit under Order

VI Rule 17 CPC seeking amendments to the plaint. It seems that the court below has allowed the said IA through Ext.P6 even though the same was also filed after the commencement of the trial. It seems that the Commission application was dismissed by the court below by highlighting the ground that the trial has been commenced.

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

4. On going through the order passed by the court below on IA.2525/2015, I do not find any reason to interfere with the said order. The amendment was relating to some corrections to be made in the schedule of the property appended with the plaint. At the same time, this Court is of the view that Ext.P5 order has resulted in substantial miscarriage of justice and, therefore, the same is liable to be set aside.

In the result, OP(C) No.1026/2015 is dismissed. OP (C) No.1004/2015 is allowed and Ext.P5 order stands set

aside. IA.1858/2014 stands allowed. The court below shall depute a Commissioner and shall order the batta to be paid. Without fail, the petitioner shall pay the batta as may be ordered by the court below, so that the Commission can be taken out at the earliest.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/09/06

// True Copy //

PA to Judge