

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP(C).No. 1317 of 2015 (O)

OS. NO.88/2002 OF SUB COURT, KOCHI.

.....

PETITIONER(S):

- 1. DHARMENDRA D.VORA, AGED 48 YEARS,
S/O.DHIRAJLAL VORA, C.C. 5/698 GUJARATHI ROAD,
MATTANCHERY, KOCHI - 682 002.**
- 2. HEMANSU D.VORA,
S/O.DHIRAJLAL VORA, C.C. 5/698 GUJARATHI ROAD,
MATTANCHERRY, KOCHI - 682 002.**

**BY ADVS.SRI.LAL K.JOSEPH,
SRI.A.A.ZIYAD RAHMAN,
SRI.V.S.SHIRAZ BAVA,
SRI.JOSEPH KURIAN VALLAMATTAM.**

RESPONDENT(S):

- 1. RAMESHCHANDRA JEEVARJ VORA,
S/O.JIVRAJ VORA, NEW ROAD, KOCHI - 2.**
- 2. SUNIL D.VORA,
S/O.DHIRAJLAL VORA, C.C. 5/698, GUJARATHI ROAD,
MATTANCHERY, KOCHI - 682 002.**
- 3. DARSANA MITESH SHAH,
D/O.DHIRAJLAL VORA, RESIDING AT D46,
BCC SPRING FIELD APARTMENT, 8 EVK SAMPAT ROAD,
VEPRI, CHENNAI - 600 007.**

**R1 BY ADVS. SRI.K.N.SIVASANKARAN,
SRI.SUNIL SHANKER.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1: TRUE COPY OF THE O.S.NO.88/2002 FILED BEFORE THE SUBORDINATE JUDGES COURT, KOCHI.
- EXT.P-2: TRUE COPY OF THE WRITTEN STATEMENT ON 04.10.2002.
- EXT.P-3: TRUE COPY OF THE JUDGEMENT DATED 26.02.2004.
- EXT.P-3(A): TRUE COPY OF THE DECREE DATED 26.02.2004.
- EXT.P-4: TRUE COPY OF THE FINAL DECREE APPLICATION.
- EXT.P-5: TRUE COPY OF THE COMMISSION REPORT FILED ON 22.05.2013 ALONG WITH THE VALUATION REPORT AND SKETCH OF THE VILLAGE OFFICER.
- EXT.P-6: TRUE COPY OF THE OBJECTION TO THE COMMISSION REPORT ON 17.08.2013.
- EXT.P-7: TRUE COPY OF THE ORDER DATED 19.03.2014 IN I.A.NO.1527/11 REMITTING EXT-P5 & P5(A).
- EXT.P-8: TRUE COPY OF THE COMMISSIONER REPORT DATED 01.07.2014.
- EXT.P-9: TRUE COPY OF THE OBJECTION TO EXT-P8.
- EXT.P-10: TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS DATED 05.08.2014.
- EXT.P-10(A): TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS DATED 08.10.2014.
- EXT.P-10(B): TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS DATED 06.11.2014 .
- EXT.P-10(C): TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS DATED 12.12.2014.
- EXT.P-10(D): TRUE COPIES OF THE PRINT OUT OF THE PROCEEDINGS DATED 19.12.2014.
- EXT.P-11: TRUE COPY OF THE REVIEW PETITION NO.189/2015 AND ITS OBJECTION.

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EXT.P-11(A): TRUE COPY OF THE OBJECTION.

EXT.P-12: TRUE COPY OF THE I.A.NO.249/2015 FILED BY THE PETITIONERS.

EXT.P-13: TRUE COPY OF THE COMMON ORDER.

EXT.P-14: TRUE COPY OF THE I.A.NO.226/2015 AND THE OBJECTION.

EXT.P-15: TRUE COPY OF THE ORDER DATED 21.03.2015 IN I.A.NO.226/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
O.P.(C) No.1317 of 2015
.....

Dated this the 29th day of June, 2015

J U D G M E N T

A preliminary decree was passed in a suit for partition thereby finding that the plaintiffs are entitled to half share over the properties and the defendants are entitled to the remaining half share. Proceedings for passing the finding decree was initiated. The Commissioner has reported that the property could not be divided by metes and bounds into two shares as there is a building in the property in which one party is occupying the first floor and the other party is occupying the ground floor. When such a proper

division cannot be made, the court below has ordered sale of the property in auction among the parties. As the parties have not come forward, the court below has ordered sale in public auction. According to the petitioners, after the passing of preliminary decree, first respondent, who is the mother of the petitioners, died and therefore, presently they have come up with a request to get the partition of their shares among them.

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

4. The learned counsel for the respondents herein has pointed out that the present attempt of the petitioners is nothing but to stall the proceedings indefinitely and to see that partition is not taking place as ordered in the preliminary decree. It has also been pointed out that the preliminary decree was passed on a compromise whereby the plaintiffs had agreed to limit their claim to half share and the defendants had agreed to limit their claim to the remaining

half share of the property. In such case, the only course open at present is to divide the property by metes and bounds into two shares. The passing of final decree will not stand in the way of the petitioners herein to claim for a further supplementary preliminary decree in the matter, as far as their shares among them are concerned. According to the petitioners, in such case, they will have to vacate the property and to trace out another property for putting up a building. The present claim is that if the two shares of the petitioners can be separated from the property, they will get a piece of land in which they can put up a building. If such a course has to be adopted, the entire proceedings have to commence afresh. In such a case, respondents herein will be put to serious heart-burn and injuries. Presently, I do not find anything to interfere with the matter. Let the proceedings for passing the final decree continue. Let the auction be conducted as ordered. Still the petitioners are not ready to have a sale in auction among the parties.

Matters being so, this Original Petition is devoid of merits, and is only to be dismissed, and I do so.

In the result, this Original Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge