

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP(C).No. 4705 of 2013 (O)

(I.A.NO.4005/2013 IN O.S.NO.914/2011 OF PRINCIPAL MUNSIF, KOLLAM)

PETITIONER :

UNNIKRISHNAN NAIR, AGED 71 YEARS,
S/O CHELLAPPAN PILLAI, SREERAMAPURATHU VEEDU,
KANJIRAKODE CHERRY, MULAVANA VILLAGE,
P.O.MULAVANA, KOLLAM DISTRICT- 691 503

BY SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE
ADVS. SRI.SAJU.S.A
SMT.PA.SHEEJA

RESPONDENT(S):

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1. V.N.BALACHANDRAN PILLAI, AGED 61 YEARS,
S/O SANTHA DEVI AMMA, VADAKKOTTU PUTHEN VEEDU,
NETTAYAM, AMBALAMKUNNU HOUSE NO.1002, NETTAYAM WARD,
ELAMADU PANCHAYATH- 691 537
 2. V.N. MOHANAN, AGED 57 YEARS,
D/O SANTHADEVI AMMA, JANMALAYAM, SANTHOSH BHAVAN,
HOUSE NO.52, VADAKKOTTU PUTHENVEEDU, NETTAYAM,
AMBALAMKUNNU, HOUSE, NO.1002,
NETTAYAM P.O, ELAMADU PANCHAYATH, PIN-691 537
 3. V.S. AMBIKA DEVI AMMA, AGED 59 YEARS,
D/O SANTHADEVI AMMA, JANMALAYAM, SANTHOSH BHAVAN,
HOUSE NO.52, VADAKKOTTU PUTHENVEEDU, NETTAYAM,
AMBALAMKUNNU, HOUSE, NO.1002,
NETTAYAM P.O, ELAMADU PANCHAYATH, PIN-691 537
 4. V.S JALAJA, AGED 53 YEARS,
D/O SANTHA DEVI AMMA, JALAJAMANDIRAM, HOUSE NO.248,
VADAKKOTTU PUTHEN VEEDU, NETTAYAM, AMBALAMKUNNU,
HOUSE NO.1002, NETTAYAM P.O., ELAMADU PANCHAYATH- 691 537
 5. V.S. RAJESWARI AMMA, AGED 50 YEARS,
D/O SANTHA DEVI AMMA, GOKULAM, NELLIMUKKU P.O.,
KAREEPRA, MULAVOORKONAM WARD, HOUSE NO.68,
PIN-691 509

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6. V.S JAYALAKSHMI, AGED 48 YEARS,
S/O SANTHA DEVI AMMA, SANTHYA DEEPAM, PALLIKKAL P.O.,
HOUSE NO.175, TOWN WARD, KILIMANOOR,
TRIVANDRUM -691 566
7. A.R. MANJULA, AGED 37 YEARS, D/O AMBIKA DEVI,
SAKETHAM VELLIMON P.O, CHERUMOOD,
KOLLAM -681 511
8. A.R. SANTHOSH KUMAR, AGED 36 YEARS,
SANTHOSH BHAVAN, NETTAYAM P.O, AMBALAMKUNNU-691 537
9. VASUNTHARA DEVI, AGED 64 YEARS,
D/O RADHAMMA, AJITH BHAVAN, KADAKKADU,
PANTHALAM -689 501
10. SYAMALA, AGED 58 YEARS, D/O RADHAMMA,
PARIKKAL VEEDU, PUTHENSANKETHAM,
KOYIVILA P.O, PIN- 691 590
11. VARATHA BHAI, AGED 48 YEARS,
D/O RADHAMMA, PRANAVAM, MANUMEL,
ARoor P.O, ERNAKULAM, PIN-689 501
12. AJITH KUMAR, AGED 45 YEARS,
D/O VASUNTHARA DEVI, AJITH BHAVAN, KADAKKADU,
PANTHALAM P.O, PIN-689 501
13. ANJALI, AGED 34 YEARS,
D/O VASUNTHARA DEVI, AJITH BHAVAN, KADAKKADU,
PANTHALAM P.O, PIN-689 501
14. SINDHU DEVI, AGED 34 YEARS,
D/O SYAMALA, PARIKKAL VEEDU, PUTHENSANKETHAM,
KOYIVILA P.O, PIN- 691 590
15. PRAMOD, AGED 36 YEARS,
S/O V.N. MURALI, VASANTHAM, CHEMPAKASSERI NAGAR,
KESAVADASAPURAM, TRIVANDRUM- 695 005
16. VINOD CHANDRAN, AGED 35 YEARS,
S/O. BALACHANDRAN PILLAI, VADAKKOTTU PUTHENVEEDU,
HOUSE NO.1002, NETTAYAM P.O, AMBALAMKUNNU,
ELAMADU- 691 537
17. GEETHA, AGED 50 YEARS, W/O LATE ARUNKUMAR,
SINDHURAM, THODUPUZHA EAST P.O.,
THODUPUZHA -685 585
18. USHA DEVI AMMA, AGED 70 YEARS,
D/O SARADAMMA, RETIRED HEADMISTRESS, LEKSHMI NIVAS,
THEVALLY P.O, THEVALLY, KOLLAM- 691 009

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19. INDIRA DEVI AMMA, AGED 68 YEARS, D/O SARADAMMA, REPRESENTED BY HER POWER OF ATTORNEY HOLDER USHA DEVI AMMA, D/O SARADAMMA, RETIRED HEADMISTRESS, LEKSHMI NIVAS, THEVALLY P.O, THEVALLY, KOLLAM- 691 009
20. UMA DEVI AMMA, AGED 64 YEARS, D/O SARADAMMA, RETIRED TEACHER, P.O.SREEKARIYAM, MUDAVANMUKAL, THIRUVANANTHAPURAM 695 002
21. KRISHNA AMMA, AGED 62 YEARS, D/O SARADAMMA, SREERAMAPURAM, KANJIRACODE, KUNDARA P.O, MULAVANA VILLAGE, PIN- 691 501
22. THULASIBHAI, AGED 59 YEARS, SAIKRIPA, KOTTAKKAKOM, PERINADU, P.O. KOLLAM- 691 601
23. UNNIKRISHNAN NAIR, S/O RADHAMMA, AGED 56 YEARS, AJITH BHAVAN, KANNAMCODE, ADOOR P.O- 691 528
24. MUKUNDAN PILLAI, S/O RADHAMMA, AGED 56 YEARS, AJITH BHAVAN, KANNAMCODE, ADOOR P.O-691 528
25. SANTHADEVI AMMA, AGED 80 YEARS, D/O GOWRI AMMA, VADAKKOTTU VEEDU 7, NETTAYAM P.O., AMBALAMKUNNU -691 637
26. RADHAMMA, AGED 84 YEARS, S/O GOWRI AMMA, AJITH BHAVAN, KANNAMCODE, ADOOR P.O, PIN-691 528
27. PROF. V.N. MURALEEDHARAN PILLAI, AGED 67 YEARS, S/O SANTHADEVI AMMA, RESIDING AT VASANTHAM, CHEMBAKASSERY NAGAR, DEFENDANT, KESAVADASAPURAM, THIRUVANANTHAPURAM CORPORATION, T.C. 11/11 NALANCHIRA DIVISION.
28. SIVAN PILLAI, AGED 55 YEARS, S/O RADHAMMA, VINEED BHAVAN, KUNNAMCODU, ADOOR P.O, WARD NO.20, ADOOR MUNICIPALITY -691 523
29. SREEKUMARI.U, D/O UMADEVI AMMA, RESIDING AT 'GOKULAM', TC 1/1978, KUMARAPURAM, MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM- 695 001

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**30. SREEKALA.U, D/O UMADEVI AMMA,
RESIDING AT 'SREERENJINI, ANAND LANE,
PTP WARD, VATTIYOORKAVU P.O,
THIRUVANANTHAPURAM -695 013**

**R1, & R3,R12 & R14 BY ADVS. SRI.K.JAGADEESCHANDRAN NAIR
SRI.J.KRISHNAKUMAR
SMT.DIVYA C BALAN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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B.KEMAL PASHA, J.

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O.P.(C).No.4705 of 2013

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Dated this the 9th day of July, 2015

J U D G M E N T

The petitioner is a defendant in a suit for partition. It is alleged that during the pendency of the suit, some valuable trees were cut and removed by the petitioner from the plaint schedule property. Initially there was an order of temporary injunction in the suit before the court below. The same was taken up before the appellate court by the petitioner herein and the appellate court vacated the order of temporary injunction. Aggrieved by the same, the respondents had approached this Court and this Court has passed an order of temporary injunction against all the parties from committing waste in the property and from cutting and removing trees thereof.

2. The petitioner wanted to remove the timber logs of the trees which were cut and removed by him from the

property. As the order passed by this Court was silent with regard to the removal of the timber, an application for review was filed. The same was disposed of by this Court through Exhibit P6 order, whereby the petitioner was directed to approach the court below through an I.A. in tune with Exhibit P6 order. The petitioner filed I.A.No.4005 of 2013 before the court below, seeking permission to remove the timber logs. The court below has passed Exhibit P7 order by ordering public auction of the logs and the deposit of the sale proceeds before the court below. Exhibit P7 order is under challenge.

3. It may be true that the trees were cut and removed prior to the order of temporary injunction in the suit. At the same time, trees were cut and removed during the pendency of the suit. When the plaint was presented and the suit was numbered and subsequently an order of temporary injunction was passed in the suit, it is evident that any of the parties should not have cut and removed the trees from the property, especially when it is a suit for

partition, and the plaintiffs are claiming shares over the property. Unless and until the preliminary decree is passed by defining the shares to each of the parties, it cannot be said that any right to shares have been crystallized on any party. Even though according to the petitioner, the trees were planted by him and he has the right to cut and remove the trees, it is a matter pending in the *lis* to be adjudicated. Unless and until a preliminary decree is passed in his favour, it cannot be said that he has got the right to cut and remove the trees. Therefore, the order passed by the court below ordering an auction is perfectly maintainable. At the same time, it is a fact which has to be considered whether a public auction or a private auction has to be conducted in the matter. When the petitioner wants the timber as such, it may not be feasible to conduct a public auction. The timber has to be valued by appointing an expert and based on the valuation, the upset price has to be fixed. Better option as conceded by the learned counsel for the respondents also, is the conduct of a private auction in the matter.

In the result, this Original Petition (Civil) is allowed in part, by modifying Exhibit P7 order. Instead of a public auction, the court below shall fix the upset price after a valuation of the timber through an expert and conduct a private auction through the appointment of a Commissioner. The parties to the suit can participate in the auction and bid in the auction. Sale proceeds shall be deposited before the court below till the disposal of the suit.

Sd/-

B.KEMAL PASHA
JUDGE