

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP(C).No. 2227 of 2015 (O)

OS 88/2002 OF PRINCIPAL SUB COURT, KOCHI

PETITIONER(S):

1. **DHARMENDRA D.VORA, AGED 48 YEARS,
S/O.DHIRAJLAL VORA, C.C.5/698, GUJARATHI ROAD,
MATTANCHERY, KOCHI-682002.**
2. **HEMANSU D VORA, S/O.DHIRAJLAL VORA,
C.C.5/698, GUJARATHI ROAD,
MATTANCHERY, KOCHI-682002.**

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

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-682002.**
3. **DARSANA MITESH SHAH,
D/O.DHIRAJLAL VORA, RESIDING AT D46,
BCC SPRING FIELD APARTMENT, 8 EVK SAMPAT ROAD,
VEPRI, CHENNAI-600007.**

**R1 BY ADVS. SRI.K.N.SIVASANKARAN
SRI.SUNIL SHANKER
SMT.ARCHANA S. KUMAR**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 02-12-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 TRUE COPY OF THE JUDGMENT DATED 26/2/2004 IN O.S.88/2002 OF THE
ADDITIONAL SUB JUDGE,KOCHI
- P1(A) TRUE COPY OF THE PRELIMINARY DECREE DATED 26/2/2004 IN O.S.88/2002
- P2 TRUE COPY OF THE FINAL DECREE APPLICATION NO.IA.1527/11 IN
O.S.88/2002
- P3 TRUE COPY OF THE COMMISSION REPORT FILED ON 22.05.13 ALONG WITH
THE VALUATION REPORT AND SKETCH OF THE VILLAGE OFFICER IN
I.A.1527/11 IN O.S.88/2002
- P4 TRUE COPY OF THE COMMISSION REPORT DATED 1.7.14 IN I.A.1527/11 IN
O.S.88/2002
- P5 TRUE COPY OF THE PRINT OUT OF THE PROCEEDING DATED 5/8/14 IN
FDA.1527/11
- P5(A) TRUE COPY OF THE PRINT OUT OF THE PROCEEDING DATED 8/10/14 IN
FDA.1527/11
- P5(B) TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS DATED 6/11/14 IN
FDA.1527/11
- P5(C) TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS DATED 12/12/14 IN
FDA.1527/11
- P5(D) TRUE COPY OF THE PRINT OUT OF THE PROCEEDINGS DATED 19/12/14 IN
FDA.1527/11
- P6 TRUE COPY OF THE COMMON ORDER DATED 21/3/2015 OF THE HON'BLE
SUBORDINATE JUDGE,KOCHI
- P7 TRUE COPY OF THE ORDER DATED 21.03.2015 IN I.A.226/15 IN O.S.88/2002
- P8 TRUE COPY OF THE JUDGMENT IN O.P.(C)1317/15 DATED 29/6/2015 OF THIS
HON'BLE COURT
- P9 TRUE COPY OF THE COMMISSION REPORT DATED 27/7/2015 I.A.1527/12 IN
O.S.88/2002
- P10 TRUE COPY OF THE ORDER DATED 28/7/2015 IN I.A.1527/12 IN O.S.88/2002
- P11 TRUE COPY OF THE APPLICATION I.A.801/15 DATED 17-8-2015 UNDER S.3(1)
OF THE PARTITION ACT IN I.A.1527/12 IN O.S.88/2002
- P12 TRUE COPY OF THE COUNTER AFFIDAVIT DATED 19-8-2015 IN EXT.P11
- PJ

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P13 TRUE COPY OF THE COMMON JUDGMENT DATED 22/8/2015 IN I.A.801/15 AND
802/15 DATED 22/8/15.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. ABRAHAM MATHEW, J.

O.P.(C)No.2227 of 2015

Dated this the 2nd day of December, 2015

J U D G M E N T

Petitioners and the second and third respondents are respondents in IA.1527 of 2011 filed to pass a final decree in OS.88 of 2002 of Additional Sub Judge, Kochi. The suit is for partition. The commissioner appointed by the court reported that physical division of the property is not possible. No party was ready to purchase the share of the others. The court ordered sale of the property by public auction. The petitioners filed IA.226 of 2015 for a division amongst themselves of the sharers allotted jointly to them and respondents 3 and 4. By Ext.P7 order the learned Sub Judge dismissed it. This was confirmed by Ext.P8 of this court in OS.1317 of 2015. After the matter went back to the trial court the petitioners filed IA.801 of 2015 to order sale of the property among the sharers instead of sale by public auction and IA.802 of 2015 to stay the other proceedings in the final decree application till the disposal of IA.801 of 2015. By Ext.P13 common order the learned Sub Judge has dismissed those applications. This is

challenged.

2. Heard.

3. There is no dispute that the property cannot be divided physically among the sharers. No co-owner was not ready to purchase the shares of the others. That is why the court ordered sale in public auction. The court has fixed Rs.1,65,00,000/- (Rupees One crore sixty five lakhs only) as the upset price. Now the petitioners submit that they are ready to purchase the property at that price. This cannot be allowed. That is only upset price. The petitioners are free to take part in the public auction. I do not find anything wrong in the order passed by the learned Sub Judge.

4. Learned counsel for the petitioners submits that the share of the petitioners and the respondents 3 and 4 may be divided amongst themselves. That can be done after the sale.

In the result this OP is disposed of with the above observation.

sd/-

K. ABRAHAM MATHEW
JUDGE