

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

O.P.(C) No. 2277 of 2015 (O)

**AGAINST THE ORDER IN C.M.A No. 28/2014 OF ADDL. DISTRICT COURT, MANJERI
DATED 29-06-2015**

PETITIONER:

**UMMAKIA UMMA, AGED 80 YEARS,
D/O. MANGATTUCHALI ENIKKUTTY, OLAVATTOOR (P.O.),
KONDOTTY TALUK, MALAPPURAM DIST.**

BY ADV. SRI. R.RAJESH KORMATH

RESPONDENT(S):

- 1. MUHAMMED, AGED 60 YEARS,
S/O. MANGATTUCHALI MAMMADEESSA, OLAVATTOOR (P.O.),
KONDOTTY TALUK, MALAPPURAM DISTRICT - 673 638.**
- 2. FATHIMA, AGED 56 YEARS,
W/O C.M. BEERANKUTTY MUSALIYAR, VETTUPARA, CHEEKODE P.O.,
KONDOTTY TALUK, MALAPPURAM DISTRICT - 673 638.**
- 3. ALAVI, AGED 54 YEARS,
S/O. MANGATTUCHALI MAMMADEESSA, OLAVATTOOR (P.O.),
KONDOTTY TALUK, MALAPPURAM DIST - 673 638.**

**R1 TO R3 BY ADVS. SRI. K.M.SATHYANATHA MENON
SMT. KAVERY S THAMPI**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: COPY OF THE AMENDED PLAINT DT. 2.1.2014 IN O.S.No.1/2014 ON THE FILE OF THE COURT FO THE SUBORDINATE JUDGE OF MANJERI.
- EXT.P2: COPY OF THE I.A. No. 11/14 AND THE AFFIDAVIT ACCOMPANYING THE SAID APPLICATION, DATED 2.1.2014 IN O.S.No.1/2014 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI.
- EXT.P3: COPY OF THE ORDER DATED 2.1.2014 IN I.A.No.11/2014 O.S. No.1/2014 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI.
- EXT.P4: COPY OF THE COUNTER STATEMENT DATED 2/1/2014 IN I.A. No.11/14 IN O.S. No.1/14 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI.
- EXT.P5: COPY OF THE WRITTEN STATEMENT DATED 28.03.2014 FILED BY RESPONDENTS-DEFENDANTS 1 TO 3 IN O.S. No.1/2014 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI.
- EXT.P6: COPY OF THE ORDER DATED 25.11.2014 IN I.A. No.11/2014 IN O.S. No.1/2014 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI.
- EXT.P7: COPY OF THE MEMORANDUM OF APPEAL DATED 20.12.2014 IN C.M.A. No.28/2014 ON THE FILE OF THE COURT OF THE ADDITIONAL DISTRICT JUDGE OF MANJERI.
- EXT.P8: CERTIFIED COPY OF THE ORDER DATED 29.6.2015 IN C.M.A. No.28/2014 ON THE FILE OF THE COURT OF THE ADDITIONAL DISTRICT JUDGE OF MANJERI.

RESPONDENT(S)' EXHIBITS

- EXT.R1(a): COPY OF DOCUMENT NO.910 OF 1965 OF THE SUB REGISTRAR OFFICE, KONDOTTY.
- EXT.R1(b): COPY OF DOCUMENT NO.496 OF 1973 OF THE SUB REGISTRAR OFFICE, VAZHAKKAD.

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EXT. R1(c): COPY OF KANAM DEED DATED 06.02.1978.

**EXT. R1(d): COPY OF DOCUMENT NO.898 OF 1948 OF SUB REGISTRAR OFFICE,
KONDOTTY.**

**EXT. R1(e): COPY OF DOCUMENT NO.2707 OF 1953 OF SUB REGISTRAR OFFICE,
KONDOTTY.**

//TRUE COPY//

P.A. TO JUDGE

WW

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2277 of 2015

Dated this the 2nd day of November, 2015

JUDGMENT

Petitioner is the Plaintiff in O.S. No.1/2014 of Sub Court, Manjeri. The suit is for partition of immovable properties.

2. Some of the properties belonged to her paternal grandfather and some other to her and her brother. Respondents 1 to 3 are the children of her brother. Along with the plaint she filed I.A. No.11/2014 for a temporary injunction. This was dismissed. Though the order was challenged in C.M.A. No.28/2014, it was not successful. The legality of the orders of the court below is challenged.

4. Heard.

5. The contention of respondents 1 to 3 is that the properties now sought to be partitioned were already partitioned in 1953 by a registered document and

thereafter the petitioner executed several documents in respect of the portion of the properties allotted to her.

6. The partition deed of 1953 allegedly bears the thumb impression of the petitioner. Submission of the learned counsel is that if the thumb impression is found to be the thumb impression of the petitioner, it was obtained under vitiating circumstances. Prima facie, this cannot be accepted. Her husband is a witness to the document of 1953.

7. After 1953 partition, in 1965, 1973 and 1978 the petitioner executed Exts. R1(a), R1(b) and R1(c) documents by which she alienated the property allotted her by the partition deed of 1953. In the first and third documents mentioned above, her husband is a witness.

8. The learned counsel submits that the petitioner is an illiterate lady which is not denied by respondents 1 to 3. That may be correct. But the fact that her husband

is a witness in 1953 partition deed and in the subsequent documents executed by her is significant.

9. I do not think that the petitioner has established a prima facie case. The courts below were right in dismissing her application. No interference is called for. In the result, this original petition is dismissed.

It is made clear that the disposal of the suit shall be based on the evidence recorded in the case and not any observations in this judgment or the impugned judgment or order.

Sd/-
K. ABRAHAM MATHEW
JUDGE

ww/02/11/2015