

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

OP(C).No. 2606 of 2015 (O)

(I.A.NOS.2458/15 AND I.A.NO.2459/2015 IN I.A.NO.1807/09 IN O.S.NO.140/1978 OF 1ST
ADDL.SUB COURT, THRISSUR)

PETITIONER:

CHAKKORU @ JACOB, AGED 81 YEARS
S/O.CHALISSERY VETTAN LONAPPAN, HILL GARDEN
KUTANELLUR, VIYYUR, THRISSUR
P IN 680014

BY ADVS.M/S.VARGHESE & JACOB
SRI.VIVEK VARGHESE P.J.
SRI.VARUGHESE M EASO

RESPONDENTS:

1. MR.KURIAKOSE
S/O.CHALISSERY VETTAN LONAPPAN, ROSE GARDEN
PATTURAIKKAL, THRISSUR 680001
2. MR JOHN
S/O.LATE PALU, CHALISSERY HOUSE, EAST FORT, THRISSUR
PIN-680001
3. MR JOSE
S/O.LATE PALU, CHALISSERY HOUSE, EAST FORT, THRISSUR
PIN-680001
4. SMT KOCHU MARY
D/O.LATE PALU, CHALISSERY HOUSE, EAST FORT, THRISSUR
PIN-680001
5. THRESSIAMMA
D/O.LATE PALU, CHALISSERY HOUSE, EAST FORT, THRISSUR
PIN-680001
6. MR BENNY
S/O.LATE PALU, CHALISSERY HOUSE, EAST FORT, THRISSUR
PIN-680001
7. SMT. SHEENA
D/O.LATE PALU, CHALISSERY HOUSE, EAST FORT, THRISSUR
PIN-680001

R2,3,6,7 BY ADV. SRI.SANTHOSH P.PODUVAL
R2,R3,R6,R7 BY ADV. SMT.R.RAJITHA
R2,R3,R6,R7 BY ADV. SMT.VINAYA V.NAIR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 21-12-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

P1:-TRUE COPY OF THE PRELIMINARY DECREE IN OS NO 140/1978 OF THE SUB COURT, THRISSIVAPEROR(THRISSUR)DTD 23/6/1981

P2:-TRUE COPY OF THE JUDGMENT DTD 20/1/1983 IN CMA NO 168/1982 OF THIS HON'BLE COURT

P3:-TRUE COPY OF COMMISSION REPORT DTD 4.2.2004 IN IA NO 1807/1999. IA NO 1293/2000& IA NO 387/2002 IN OS NO.140/1978 OF IST ADDL.SUB COURT, THRISSUR.

P4:-TRUE COPY OF JUDGMENT DTD 27/5/2014 IN RFA NO 80/2012 OF THIS HON'BLE COURT

P5:-TRUE COPY OF THE ORDER DTD 27/8/2014 IN IA NO 1807/1999 IN OS NO 140/1978 OF IST ADDL.SUB COURT, THRISSUR

P6:-TRUE COPY OF THE JUDGMENT IN OPC NO 2181/2015 DTD 16/10/2014 OF THIS HON'BLE COURT

P7:-TRUE COPY OF RECEIPT DTD 23/1/2015 ISSUED BY THE DISTRICT TREASURY, THRISSUR FOR RS 93,00,000/-

P8:-TRUE COPY OF APPLICATION IA NO 2458/2015 DTD 7/6/2015 FILED BEFORE IST ADDL SUB COURT, THRISSUR

P9:-TRUE COPY OF APPLICATION IA NO 2459/2015 DTD 7/6/2015 FILED BEFORE IST ADDL SUB COURT THRISSUR

P10:-TRUE COPY OF THE OBJECTION IA NO 2458/2015 DTD 12/6/2015 BEFORE IST ADDL SUB COURT, THRISSUR

P11:-TRUE COPY OF THE OBJECTION IA NO 2459/2015 DTD 12/6/15 BEFORE IST ADDL.SUB COURT, THRISSUR

P12:-TRUE COPY OF THE COMMON ORDER DTD 9/10/2015 IN IA NOS 2458/2015 AND 2459/2015 IN IA NO 1807/1999 IN OS NO 140/1978 OF THE IST ADDITIONAL SUB JUDGE, THRISSUR

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

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K.ABRAHAM MATHEW J.

O.P.(C)No.2606 of 2015

Dated this the 21st day of December, 2015

JUDGMENT

Petitioner is the second plaintiff in O.S.No.140 of 1978 of Sub Court, Thrissur which is for partition of three items of properties. Respondents are the legal heirs of the deceased defendant. The trial court passed a preliminary decree. It was challenged in A.S.No.47 of 1982. A division bench of this court dismissed the appeal. An application for passing final decree has been filed by the petitioner. The court found that item No.3 cannot be divided physically among the co-owners. So it ordered sale of the property among them. The petitioner has purchased it. With regard to items 1 and 2 the commissioner who was deputed to effect the partition filed a report as far back as February, 2004. Respondents filed I.A.No.2458 of 2015 to remit the commission report and to re-open the evidence. Their case is that after the commissioner filed the report a part of item 1 and 2 properties was taken possession of by Corporation of Thrissur as it was a puramboke land and redetermination of their value is necessary. There was a business being run in item No.3 by name Grand Lodge. The respondents claimed that their predecessor was a tenant of the building and that right has to be determined in the final decree proceedings. They filed I.A.No.2459 of 2015 to remit the commission report so as to ascertain certain facts relating

to the Grand Lodge. By the impugned order the learned Sub Judge has allowed the applications. This is challenged.

2. If a portion of items 1 and 2 has been taken possession of by the Corporation of Thrissur for the reason that it is a puramboke land a reconsideration of the value of the property is necessary. For this purpose the commission report has to be remitted. But before that the respondents shall produce before the court the documents relating to the portion that has been allegedly taken possession of by the Corporation. If the documents prove the allegation of the respondents, the court may direct the commissioner to revalue the property and pass appropriate directions.

3. Coming to the 3rd item of property, the predecessor of the respondents used to conduct a business in it by name Grand Lodge. The contention of the respondents is that their predecessor, who was the sole defendant, was a tenant of the building. The trial court in the preliminary judgment rejected the claim of tenancy. That has been upheld by this court in the judgment in A.S.No.47 of 1982. This court has observed: "There is nothing to suggest that the tenancy created under Ext B5 subsisted after the settlement deed. The claim of tenancy was rightly rejected by the lower court". The respondents cannot be heard to say that they have tenancy right in the building. It is true that certain observations with regard to Grand Lodge made in the judgment of the trial court were found

unnecessary by this court in the appeal. But that was not with regard to the tenancy right but the business run in the building. It is true that the business run in the building is not a subject matter of this suit. The claim of the tenancy raised by the respondents cannot be entertained. The trial court was wrong in granting the prayer of the respondents to direct the commissioner to ascertain certain facts with regard to the building in item No.3.

In the result, this Original Petition is disposed of as follows:

The direction of the trial court to remit the commission report to ascertain certain facts pertaining to the building in item No.3 is set aside. The direction with regard to items 1 and 2 shall be reconsidered if the respondents produce documents to prove that the Corporation of Thrissur has taken possession of a portion of those properties after the commissioner filed his report. Thereafter, the court shall proceed under the relevant rules of Civil Rules of Practice as expeditiously as possible taking into consideration the fact that the suit was instituted in 1978.

Sd/-

K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge