

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

RFA.No.461 of 2008 (E)

AGAINST THE ORDER/JUDGMENT IN OS 113/2005
OF PRINCIPAL SUB COURT, PALAKKAD DATED 27-11-2007

APPELLANTS/DEFENDANTS 2, 3, 5 & 6 :-

1. MANI,
S/O.ARU,
MELARCODU KALAM, POOLAKADU, NOORANI, YAKKARA AMSOM,
PALAKKAD.
2. RAMACHANDRAN, S/O.ARU, AGED 43 YEARS,
DO. DO.
3. PREMAKUMARI, W/O.CHANDRAN, AGED 47,
VENNAKKARA AMSOM, PALAKKAD DISTRICT.
4. RAJASULOCHANA, W/O.GOPI, AGED 41 YEARS,
ISWARYA NIVAS, THENNALIPARAMBU, PULLODE,
TRIPPALUR AMSOM, ALATHUR TALUK.

BY ADVS.SRI.JOHNSON P.JOHN
SRI.BABY MATHEW

RESPONDENTS : PLAINTIFFS/DEFENDANTS 4, 7 & 8 :-

1. SREENIVASAN, AGED 38 YEARS,
S/O.MADHAVAN,
RESIDING AT MANAGAM VEELIL, PANDRAKAVU,
YAKKARA AMSOM, PALAKKAD.
2. SELVARAJAN, S/O.MADHAVAN, AGED 36 YEARS,
DO. DO.
- * 3. SAVITHRI, W/O.LATE RAVEENDRANATHAN,
AGED 33 YEARS, DO. DO.

* (DIED LR's RECORDED)

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4. SARATH (MINOR),
S/O.RAVEENDRANATHAN, AGED 12 YEARS, -DO- -DO-

* (RECORDED AS MAJOR)

5. SARANYA (MINOR),
S/O.RAVEENDRANATHAN, AGED 12 YEARS, DO. DO.

* (RECORDED AS MAJOR)

* (DIED) 6. SALINI (MINOR), D/O.RAVEENDRANATHAN,
AGED 8 YEARS, DO. DO.,
(RESPONDENTS 4, 5 & 6 REPRESENTED BY
GUARDIAN 3RD RESPONDENT SAVITHRI).

7. LAKSHMANAN, S/O.ARU, AGED 43 YEARS,
KALAPARAMBIL, NAVAKKOTTIL, PIRAYIRI,
KODUNTHIRAPULLY AMSOM, PALAKKAD TALUK.

8. SURENDRANATHAN, S/O.MADHAVAN, AGED 40 YEARS,
SHEEJA ELECTRICALS, ROOM NO.560,
RAILWAY GATE NO.4, B.P.T. ANTHOPHILL, WADALA,
MUMBAI, MAHARASHTRA.

9. KRISHNAKUMARAN, S/O.MADHAVAN, AGED 42 YEARS,
DO. DO.

*It is recorded that Respondents 4 and 5 are the legal heirs of the deceased respondents 3 and 6 vide order dtd.15.1.2015 on I.A.2824/14.

* It is recorded that Respondents 4 and 5 have attained majority vide order dtd.15.1.2015 on I.A.2823/2014.

R1,R2 & 5 BY ADV. SRI.SAJAN VARGHEESE K.
R1,R2 & 5 BY ADV. SRI.LIJU. M.P

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

I.A.No.2392 of 2014 & R.F.A.No.461 of 2008

Dated this the 04th day of February, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are defendants 2, 3, 5 and 6 in O.S.No.113 of 2005 on the file of the Court of the Principal Subordinate Judge of Palakkad. Respondents 1 to 6 are the plaintiffs and respondents 7, 8 and 9 are defendants 4, 7 and 8 respectively therein. After the appeal was filed, the third respondent (third plaintiff) passed away on 23.4.2009 leaving behind respondents 4, 5 and 6 as her legal heirs. Later the sixth respondent passed away on 23.3.2012 leaving behind respondents 4 and 5, her brother and sister respectively, as her sole legal heirs. We have by order passed on 15.1.2015 on I.A.No.2824 of 2014 recorded that respondents 4 and 5 are the legal representatives of respondents 3 and 6, who passed away on 23.4.2009 and 23.3.2012 respectively.

2. The suit instituted by respondents 1 to 6 was for partition of the plaint schedule property into 35 equal shares and allotment of 1/35 shares each to plaintiffs 1 and 2, 1/35 share to plaintiffs 3 to

6, 5/35 shares each to defendants 1 to 6 and 1/35 share each to defendants 7 and 8. The plaintiffs contended that the plaint schedule properties belonged to late Aaru and on his death it devolved on the plaintiffs and the defendants. In the trial court, all except defendants 7 and 8 had entered appearance and filed written statements. They contended that as per a partition deed registered as document No.4302 of 1996 of S.R.O. Palakkad, the plaint schedule properties were partitioned, that some of the properties described in the plaint have been sold either by deceased Aaru during his life time or by appellants 1 and 2, respondent No.7 and deceased Thanka, on the strength of partition deed No.4302 of 1996 of S.R.O. Palakkad, that later as per document No.2349 of 2000 of S.R.O. Palakkad defendant Nos.1, 3 and 4 again partitioned the properties allotted to their share as per partition deed No.4302 of 1996 of S.R.O. Palakkad, and had also sold some portions of the property to strangers. Though the defendants claimed that the partition was effected in the year 1996, no evidence was adduced before the court below to prove the partition. The trial court held that the defendants have failed to prove that a partition deed was

executed as contended by them. The trial court accordingly held that the plaint schedule property are partible as claimed and the plaintiffs are entitled to a preliminary decree for partition of the plaint schedule property. Hence this appeal.

3. The appellants and respondent Nos.1, 2, 4, 5, 8 and 9 have now entered into a compromise and settled their disputes and differences out of court. They have jointly filed I.A.No.2392 of 2014 praying that judgment and decree passed in O.S.No.113 of 2005 dated 27.11.2007 on the file of the Court of the Principal Subordinate Judge of Palakkad may be set aside in view of the payment of the sum of ₹25,00,000/- by appellants 1 to 3 to the plaintiffs and defendants 7 and 8 towards the value of their share in the plaint schedule property. The joint statement filed by the parties also discloses that parties have agreed to accept the partition deed, No.4302 of 1996 of S.R.O. Palakkad as valid and binding. In the said joint statement, the plaintiffs and defendants 7 and 8 have acknowledged receipt of the sum of ₹25,00,000/- towards the value of their share in the plaint schedule property. The settlement arrived at between the parties does not militate against the rights and

interests of the 7th respondent (4th defendant in the suit) who is also allotted a share in the properties as per partition deed No.4302 of 1996 of S.R.O. Palakkad. The relief sought in I.A.No.2392 of 2014 is to set aside the judgment and decree passed by the trial court in O.S.No.113 of 2005. A decree dismissing suit will not cause any prejudice to the 7th respondent (4th defendant). We therefore find no reason to decline the relief sought in I.A.No.2392 of 2014.

We accordingly dispose of the appeal in terms of the compromise entered into between the parties as reflected in I.A.No.2392 of 2014 by setting aside the decree and judgment passed by the Court of the Principal Subordinate Judge of Palakkad on 27.11.2007 in O.S.No.113 of 2005. Consequently O.S.No.113 of 2005 shall stand dismissed. The parties shall bear their respective costs.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRAN, JUDGE

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