

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

OP(C).No. 2134 of 2014 (O)

OS 110/2012 OF PRINCIPAL SUB COURT, KOCHI

PETITIONER(S):

1. VIMALA,
W/O.SUBAGAN, KALASIAN VEETHIL, RAMESWARAM EAST MURI,
MATTANCHERRY, (DIED).
2. K.S.JAYAKUMAR, AGED 50 YEARS,
S/O.VIMALA, RESIDING AT KALASIAN VEETHIL,
RAMESWARAM EAST MURI, MATTANCHERRY, KOCHI TALUK.
3. JAYASREE, AGED 53 YEARS,
D/O.VIMALA AND W/O.RAJAH, KALASIAN VEETHIL,
RAMESWARAM EAST MURI, MATTANCHERRY, KOCHI TALUK.
4. JAYAPRIYA, AGED 47 YEARS,
D/O.VIMALA AND W/O.SUSHIL CHANDRAN, KALASIAN VEETHIL,
RAMESWARAM EAST MURI, MATTANCHERRY,
KOCHI TALUK. REPRESENTED BY HER BROTHER AND POWER
OF ATTORNEY HOLDER (2ND PETITIONER) K.S.JAYAKUMAR.

**BY ADVS.SRI.T.B.THANKAPPAN
SRI.T.T.HARIKUMAR
SRI.ASHISH VIDYADHARAN**

RESPONDENT(S):

1. VENU @ BENNY, AGED 58 YEARS,
S/O.PARADESI, X/955, AMARAVATHI
FORT KOCHI, KOCHI-01.
2. DHANAPALAN, AGED 55 YEARS,
S/O.PARADESI, PALLATH DON BOSCO, KEEZHAMADU,
ERUMATHALA P.O., ALUVA, PIN 683112.

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3. VASANTHI, AGED 56 YEARS,
W/O.LATE RAJU, "NANDANAM", KURISUMPARAMBU ROAD,
FORT KOCHI-682001.
4. REMYA, AGED 24 YEARS,
D/O.LATE RAJU, " NANDANAM", KURISUMPARAMBU ROAD,
FORT KOCHI, ERNAKULAM DISTRICT, PIN 682001.
5. SOUMYA, AGED 22 YEARS,
D/O.LATE RAJU, " NANDANAM", KURISUMPARAMBU ROAD,
FORT KOCHI, ERNAKULAM DISTRICT, PIN 682001.
6. PRAJAMMA, AGED 63 YEARS,
D/O.PARADESI, PALLATH DON BOSCO, KEEZHAMADU,
ERUMATHALA P.O., ALUVA, PIN 683112.
7. USHA , AGED 49 YEARS,
D/O.PARADESI, PALLATH DON BOSCO, KEEZHAMADU,
ERUMATHALA P.O., ALUVA, PIN 683112.

R1 BY ADV. SRI.VINOD VALLIKAPPAN
R4,R6 & 7 BY ADV. SMT.SANDHYA RAJU

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY OF THE PLAINT IN O.S.110/2012 DATED 21.08.2014 ON THE
FILE OF THE SUBORDINATE JUDGE'S COURT, KOCHI.**

**EXHIBIT-P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE FIRST
DEFENDANT DATED 18.10.2012.**

EXHIBIT-P3: TRUE COPY OF THE COMMISSION REPORT DATED 17.10.2013.

**EXHIBIT-P4: TRUE COPY OF ORDER DATED 21.08.2014 IN O.S.110/2012 ON THE FILE
OF THE SUB COURT, KOCHI.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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B. KEMAL PASHA, J.

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O.P.(C) No.2134 of 2014
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Dated this the 12th day of August, 2015

J U D G M E N T

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In a suit for recovery of possession based on title, the court below has directed the plaintiff to value the suit property under Section 7(3A) of the Kerala Court Fees and Suits Valuation Act, 1959. In Ext.P4 order, the court below has proceeded with an assumption that the said property includes a building. The suit property is 6 cents. On a perusal of the Commissioner's report, it seems that the said 6 cents of property does not include any building in the property. At the same time, it seems that some cultivations are there in the property. The said 6 cents is not a barren land and the same does not include a building. In such case, the same has to be treated as an agricultural land within the meaning of Section 7(2) of the Kerala Court Fees and Suits Valuation Act. The proper valuation is one under

Section 7(2) and not under Section 7(3A) of the Act. Matters being so, Ext.P4 order is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Ext.P4 stands set aside. Even though the learned counsel for the respondent has canvassed an argument with regard to the maintainability of the suit, this Court is not expressing any opinion with regard to the maintainability as the said question has to be decided exclusively by the court below. The court fee paid in the matter seems to be correct and the court below shall proceed with the suit accordingly.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/12/08

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PA to Judge