

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

RFA.No. 525 of 2008

OS 20/1990 of SUB COURT, QUILANDY DATED 19-03-2008

APPELLANTS/RESPONDENTS 12 TO 14.:

1. VELACHALANKANDY LATHIKA RAJEEVAN,
W/O RAJEEVAN, AGED 43 YEARS,
BALUSSERY AMSOM DESOM, KOZHIKODE.
2. DHANYA V.K., D/O RAJEEVAN,
BALUSSERY AMSOM DESOM, KOZHIKODE.
3. DHANURAJ V.K., D/O RAJEEVAN,
BALUSSERY AMSOM DESOM, KOZHIKODE.

**BY ADVS.SRI.K.P.BALASUBRAMANYAN
SRI.NIRMAL. S**

RESPONDENT(S)/PETITIONRS & OTHER RESPONDENTS:

1. VATSALA, W/O.BALAN,
KRISHNA HOUSE, A-70, JAWAHAR NAGAR HOUSING COLONY,
ERANHIPALAM, KOZHIKODE.
2. JAYASREE, SIVANANDAN,
D/O BALAN, KRISHNA HOUSE, A-70,
JAWAHAR NAGAR HOUSING COLONY, ERANHIPALAM, KOZHIKODE.
3. LATHIKA CHANDRA MOHAN, D/O BALAN,
KRISHNA HOUSE, A-70, JAWAHAR NAGAR HOUSING COLONY,
ERANHIPALAM, KOZHIKODE.
4. RANJITHA RAJESH, D/O BALAN,
KRISHNA HOUSE, A-70, JAWAHAR NAGAR HOUSING COLONY,
ERANHIPALAM, KOZHIKODE.
5. V.MURALEEDHARAN, S/O BALAN,
KRISHNA HOUSE, A-70, JAWAHAR NAGAR HOUSING COLONY,
ERANHIPALAM, KOZHIKODE.

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6. JITHENDRA KUMAR, S/O BALAN,
KRISHNA HOUSE, A-70, JAWAHAR NAGAR HOUSING COLONY,
ERANHIPALAM, KOZHIKODE.
7. NARESH KUMAR, S/O BALAN,
KRISHNA HOUSE, A-70, JAWAHAR NAGAR HOUSING COLONY,
ERANHIPALAM, KOZHIKODE.
8. YADUNATHAN, AMARAPURI,
VATTOLI BAZAR, BALUSSERY, KOZHIKODE.
9. GEEVARAJ, AMARAPURI,
BALUSSERY, KOZHIKODE.
10. DAYAVATI, M.A. COTTAGE,
MAYAKKAL, MAHE.
11. V.K. HEMA, RESIDING AT MALAYIL,
MAKKADA, KAKKODI.
12. V.K.AJITHA, RESIDING AT KOMMATATH,
NADUVATTOM, ARAKINNAR, KOZHIKODE.
13. V.K. SARALA, RESIDING AT THACHARAKKAL,
NALUKANDATHIL, KORAPUZHA, ELATHUR.
14. V.K. SAROJINI BHASKARAN,
W/O BHASKARAN, AGED 61 YEARS, AMARAPURI
VATTOLI BAZAR, BALUSSERY, KOZHIKODE.
15. VINEETHA SIVANANDAN, W/O SIVANANDAN,
AGED 42 YEARS, 1/3045, EAST HILL
KOZHIKODE.
16. V.K.JYOTHI, W/O SURESH,
AGED 39 YEARS, SUKAF VIHAR, VATAKARA.

R1 TO 7 BY ADVS. SRI.BIJU ABRAHAM
SRI.B.G.BHASKAR
R11 TO 13 BY ADV. SMT.VEENA HARI
R15 & 16 BY ADVS. SRI.P.NARAYANAN
SRI.M.C.RATNAKARAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PJ

P.B.SURESH KUMAR, J.

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R.F.A.No.525 of 2008

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Dated this the 22nd day of July, 2015.

J U D G M E N T

The final judgment in a suit for partition is under challenge in this appeal. The appellants are a few among the legal representatives of the original first defendant.

2. As per the preliminary decree, defendants 1 and 2 and the plaintiff are entitled to 1/3rd share each in plaint schedule item Nos.1, 2, 9, 10 and 11 properties. Among the said items, item Nos.1 and 2 properties are lying contiguously and there is a residential building therein. The appellants are residing in the said building. In the final decree proceedings, the Advocate Commissioner appointed by the court initially submitted Exts.C1 to C11 reports. However, at the instance of the plaintiff, the said reports were remitted to the Advocate Commissioner with a direction to the parties to submit fresh work memos to the Advocate Commissioner for effecting partition. Thereupon,

when the Advocate Commissioner inspected the properties to effect partition, the appellants filed a work memo claiming allotment of the building to the share of the first defendant. Based on the work memos filed by the parties, the Advocate Commissioner partitioned the properties and filed Exts.C12 to C28 reports. As far as the landed properties are concerned, the Advocate Commissioner valued item Nos.1 and 2 properties, measuring approximately 1.63 acres at Rs.3,000/- per cent and the remaining properties at Rs.2,000/- per cent. The building was valued by the Advocate Commissioner at Rs.5,66,050.91. Considering the work memo filed by the appellants, the Advocate Commissioner suggested two modes of partition in his reports. Both modes contemplate allotment of the building to the share of the first defendant. In mode IA suggested by the Advocate Commissioner, the first defendant has been allotted the building with 26.17 cents of land out of plaint schedule item Nos.1 and 2 properties and in mode IIA, the first defendant has been allotted the building with 45.40 cents of land out of the plaint schedule item Nos.1 and 2 properties. The appellants filed objection to the reports of the Advocate Commissioner contending mainly that the

valuation of the building made by the Advocate Commissioner is far in excess of the actual valuation and the valuation of the landed properties is unreasonably low. An application as I.A.No.2264 of 2006 was filed by the appellants seeking orders to remit the aforesaid reports to the Advocate Commissioner. Since no evidence was let in by the appellants in support of the objections raised against the reports of the Advocate Commissioner, the court below rejected I.A.No.2264 of 2006 and the impugned final judgment was passed accepting mode IA suggested by the Advocate Commissioner. The appellants are aggrieved by the said decision and hence this appeal.

3. Heard the learned counsel for the appellants as also the learned counsel for the legal representatives of the plaintiff.

4. The learned counsel for the appellants contended that the building allotted to the share of the first defendant is a dilapidated building and its value as assessed by the Advocate Commissioner is unreasonably excessive. He also contended that the landed properties were valued by the Advocate Commissioner nominally on the basis that the value of the landed properties has

no relevance since all the three sharers have equal rights in the properties. According to the learned counsel, since the landed properties were valued nominally, the first defendant to whom the building was allotted had to forgo a substantial portion of the landed properties resulting in grave miscarriage of justice. According to the learned counsel, the exorbitant valuation of the building has further added fuel to the flame as far as the legal representatives of the first defendant are concerned. The learned counsel has pointed out that out of the 2 acres 75 cents of landed properties available for partition, the appellants who represent the 1/3rd share have got only 26.17 cents.

5. The learned counsel for the legal representatives of the plaintiff, on the other hand, contended that though the appellants have filed I.A.No.2264 of 2006 seeking orders to remit the reports to the Advocate Commissioner, no evidence was let in by them to show that the valuation made by the Advocate Commissioner is incorrect. According to him, the appellants, in the circumstances, are not entitled to raise any argument concerning the valuation of the building and the landed properties. He also suggested that if the legal representatives of

the first defendant do not require the building, the legal representatives of the plaintiff have no objection in equally dividing the landed properties among the sharers, after selling the building.

6. In a given case where the subject matter of partition is only landed properties and the properties are to be divided equally among the sharers, as rightly contended by the learned counsel for the appellants, any amount can be fixed as the value of the property as the valuation in such a case may not have any relevance at all as regards the rights of parties. However, in a case where the subject matter of partition is both landed properties and buildings, if the landed properties are valued nominally, substantial prejudice would be caused to the persons to whom the buildings are allotted, for, they will be deprived of large extent of land in lieu of the value of the buildings. As pointed earlier, the total extent of landed properties available for partition in this case is approximately 2.75 acres, of which approximately 1.63 acres were valued at Rs.3,000/- per cent and the remaining properties were valued at Rs.2,000/- per cent. The valuation was made by the Advocate

Commissioner during 2006. According to me, the said valuation cannot be accepted, as it is common knowledge that no property would have been available in the State for the said price during 2006. True, the appellants have not adduced any evidence to show that the value of the landed properties made by the Advocate Commissioner as referred to above is unreasonably low. But, that shall not deter the court from interfering with the impugned decision as I am satisfied that gross injustice has been caused to the appellants on account of the partition effected by the Advocate Commissioner as accepted by the final decree court. In the place of the old building in the properties, the legal representatives of the first defendant are deprived of the benefit of almost 1.87 acres of land. In the said circumstances, I am of the view that interest of justice demands that the properties shall be divided equally among the sharers, after selling the building and structures in the properties to third parties as suggested by the learned counsel for the legal representatives of the plaintiff.

In the result, the impugned order is set aside and the application filed by the plaintiff for passing of the final decree is remitted to the trial court for fresh disposal. The trial court shall

depute the very same Advocate Commissioner, if available, to assess the value of the properties afresh and effect partition of the same equally among the sharers, after selling the building and other structures in the property to third parties.

**Sd/-
P.B.SURESH KUMAR,
(JUDGE)**

Kvs/-

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PA TO JUDGE.