

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C).No. 2761 of 2014 (O)

(I.A.NO.5990/2014 IN OS.NO.318/2013 OF IIND ADDL.MUNSIFF COURT, ERNAKULAM)

PETITIONER/1ST RESPONDENT:

KRISHNAKUMAR, AGED 53 YEARS,
S/O.LATE KRISHNA KURUP, RESIDING AT KRISHNAGEETHAM,
VISHNUPURAM, CHERANALLOOR, ERNAKULAM DISTRICT,
PIN- 682 034.

BY ADVS.SRI.R.MANOJ
SMT.P.P.BLESSY MOL

RESPONDENT(S)/PETITIONER & OTHER RESPONDENTS:

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1. BHARATHY, AGED 79 YEARS,
W/O.LATE KRISHNA KURUP, RESIDING AT HOUSE NO.X/189A,
"SAYUJJYAM", PUTHIYA ROAD, EROOR SOUTH,
TRIPUNITHURA.PIN-682 021
 2. SREEKUMAR, AGED 54 YEARS,
S/O.LATE KRISHNA KURUP, RESIDING AT "ABHAYAM", 30/333,
WARE HOUSE ROAD, PETTAH JUNCTION,
ERNAKULAM DISTRICT. PIN-682 019
 3. MAYA DEVI, AGED 56 YEARS,
D/O.LATE KRISHNA KURUP,
RESIDING AT "SAYUJJYAM", PUTHIYA ROAD,
EROOR SOUTH, TRIPUNITHURA. PIN-682 021

R1 BY ADVS. SRI.T.B.THANKAPPAN
SRI.T.T.HARIKUMAR
SRI.ASHISH VIDYADHARAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 2761 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE JUDGMENT IN O.S.NO.318/2013 DATED 20/03/2014 OF THE II ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.

EXHIBIT-P2: TRUE COPY OF THE I.A.NO.5990/2014 IN IA NO.318/2013 OF THE II ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.

EXHIBIT-P3: TRUE COPY OF OBJECTIONS TO THE FINAL DECREE APPLICATION FILED BY THE PRESENT PETITIONER.

EXHIBIT-P4: TRUE COPY OF THE I.A.7255/2014 IN IA NO.5990/2014 IN O.S.NO.318/2013 DATED 26/09/2014.

EXHIBIT-P5: TRUE COPY OF THE ORDER OF THE COURT BELOW IN IA NO.5990/2014 IN OS NO.318/2013 OF THE II ADDITIONAL MUSNIFFS COURT, ERNAKULAM.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

B. KEMAL PASHA, J.

.....
O.P.(C) No.2761 of 2014
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Dated this the 28th day of May, 2015

J U D G M E N T

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In a suit for partition, Ext.P1 preliminary judgment has been passed, followed by a preliminary decree. According to the petitioner, who is the 1st defendant, the term “equities and reservations” mentioned in relief No.2 of the preliminary judgment includes the value of improvements also. When a Commissioner has been appointed in the final decree application, the petitioner wanted to get the value of improvements also assessed and reported. Even though in the objection, he has raised the said question, the court below has not dealt with the matter in any manner.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. It has come out that the petitioner has preferred

an appeal as against Ext.P1 preliminary judgment and decree and the said appeal is pending even now as AS.112/2014 before the Principal Sub Court, Ernakulam. When an appeal is pending, this Court is not expected to express any opinion with regard to the aforesaid argument resorted to by the learned counsel for the petitioner. The question as to whether the terms “equities and reservations” will include the value of improvements is a matter to be decided by the appellate court. If so advised, the petitioner can move the appellate court for the stay of execution, if he is in any way aggrieved.

With the said observations, this OP(Civil) is closed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/28/05

// True Copy //

PA to Judge