

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

OP(C).No. 2793 of 2014 (O)

FIDA 3345/2001 IN O.S.NO.339/2007 OF SUB COURT, KOZHIKODE

PETITIONER(S)/DEFENDANT :

MUSTAFA, AGED 65 YEARS,
S/O.K.HAMSAKOYA, 16/641, ACHARATHOPPU PARAMBU,
FRANCIS ROAD, KOZHIKODE-3.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT(S)/PLAINTIFFS 1 TO 8 :

1. V.P.KADEESABI,
W/O.AHAMMED KOYA, REJEENA VIHAR, KAHIRANGADU PARAMBU,
NADUVATTOM, KOZHIKODE P.O-673 001.
2. MOINDEENKOYA,
S/O.AHAMMED KOYA, REJEENA VIHAR, KAHIRANGADU PARAMBU,
NADUVATTOM, KOZHIKODE P.O-673 001.
3. JAMEELA,
D/O.AHAMMED KOYA, NAGARAM AMSOM DESOM,
KOZHIKODE P.O-673 001.
4. LAILA,
D/O.AHAMMED KOYA, REJEENA VIHAR, KAHIRANGADU PARAMBU,
NADUVATTOM, KOZHIKODE P.O-673 001.
5. KAMARUNNISA,
D/O.AHAMMED KOYA, REJEENA VIHAR, KAHIRANGADU PARAMBU,
NADUVATTOM, KOZHIKODE P.O-673 001.
6. A.RAMLATH,
D/O.AHAMMED KOYA, REJEENA VIHAR, KAHIRANGADU PARAMBU,
NADUVATTOM, KOZHIKODE P.O-673 001.
7. NAZEEMA.D,
D/O.AHAMMED KOYA, REJEENA VIHAR, KAHIRANGADU PARAMBU,
NADUVATTOM, KOZHIKODE P.O-673 001.
8. RISANA.D,
D/O.AHAMMED KOYA, REJEENA VIHAR, KAHIRANGADU PARAMBU,
NADUVATTOM, KOZHIKODE P.O-673 001.

..2/-

9. FATHIMA,
D/O.UMMAYAKUTTY, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
10. AYISHA,
D/O.UMMAYAKUTTY, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
11. SAYIDHA,
D/O.UMMAYAKUTTY, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
12. BEEMEYI,
D/O.UMMAYAKUTTY, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
13. SAMEEMA,
D/O.UMMAYAKUTTY, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
14. SAHAR BHANU,
D/O.UMMAYAKUTTY, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
15. ALTHAF,
S/O.ABOOBACKER, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
16. MOIDEENKOYA,
S/O.ABOOBACKER, ACHARATHOPPU PARAMBU,
NAGARAM AMSOM DESOM, KOZHIKODE-673 001.
17. SAJNA,
W/O.LATE HASHIM, P.P. APARTMENT, CHAKKIRIKADU PARAMBU,
NADUVATTOM, P.O.ARAKKINAR, KOZHIKODE-673 028.
18. RINZ, AGED 14 YEARS,
S/O.HASHIM, P.P. APARTMENT, CHAKKIRIKADU PARAMBU,
NADUVATTOM, P.O. ARAKKINAR, KOZHIKODE-673 028.
19. SAHID, AGED 13 YEARS,
S/O.HASHIM, P.P. APARTMENT, CHAKKIRIKADU PARAMBU,
NADUVATTOM, P.O. ARAKKINAR, KOZHIKODE-673 028.
20. SANA, AGED 7 YEARS,
D/O.HASHIM, P.P. APARTMENT, CHAKKIRIKADU PARAMBU,
NADUVATTOM, P.O. ARAKKINAR, KOZHIKODE-673 028.
21. SABNA, AGED 6 YEARS,
S/O.HASHIM, P.P. APARTMENT, CHAKKIRIKADU PARAMBU,
NADUVATTOM, P.O. ARAKKINAR, KOZHIKODE-673 028.

R2 TO R8 BY ADVS. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 2793 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE JUDGMENT IN O.S.NO.339/2011 DATED 08-03-2011.

EXHIBIT P2: TRUE COPY OF THE COMMISSION REPORT IN FDIA 3345/2011.

**EXHIBIT P3: TRUE COPY OF THE I.A.NO.4629/2012 IN FDIA 3345/2011 IN
O.S.NO.339/2007 DATED 03-09-2012.**

EXHIBIT P4: TRUE COPY OF THE ORDER FOR LODGMENT IN O.S.NO.339/2007.

**EXHIBIT P5: TRUE COPY OF THE AFFIDAVIT AND PETITION FILED IN SUPPORT OF
I.A.NO.3158/2014 AND ORDER OF COURT.**

**EXHIBIT P6: TRUE COPY OF THE FIDA 3345/2011 IN O.S.NO.339/2007
DATED 31.07.2012.**

**EXHIBIT P7: TRUE COPY OF THE ORDER PASSED IN I.A.NO.4629/2012 IN
FDIA 3345/2011 IN O.S.NO.339/2007 DATED 23.10.2014.**

EXHIBIT P8: TRUE COPY OF THE FD RECEIPT DATED 23.01.2015.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

P. BHAVADASAN, J.

O.P.(C). No. 2793 of 2014

Dated this the 12th day of February, 2015.

JUDGMENT

In a partition suit, the petitioner was allotted 40/216 shares. The extent of property available to the parties was 3 cents with a building thereon. In the final decree proceedings, the third defendant who claimed to have been residing in the property sought reservation of the house. A commissioner was deputed who filed Ext.P2 report indicating that it is not possible to divide the property by metes and bounds and the only option is to auction among the sharers. It is pointed out that the matter was kept pending for sometime and later it was sent for mediation. In the mediation, parties agreed that the house and the property can be allotted to the petitioner in case he deposits a sum of Rs.18,00,000/-. He was given three months time to do so. It is not in dispute that there were several

postings of the case thereafter and the petitioner before this Court did not deposit the amount. Ext.P4 is the lodgment schedule filed by the petitioner. He deposited Rs.10,00,000/- and moved an application to grant time to deposit balance Rs.8,00,000/- as per Ext. P5 application. After several adjournments the application was closed on on 14.10.2014. Copy of the order could be got only on 21.11.2014. Subsequently another petition was filed. Again a commissioner was deputed to ascertain whether division is possible. The Commissioner again reported that division is not possible and auction among the sharers is the only possible method. Therefore, the court on 23.10.2014 passed Ext.P7 order and auction was posted to 7.11.2014 at 2.30 p.m. Upset price was fixed at Rs.21,00,000/-. On that day, except the petitioner, all others participated. Plaintiff quoted Rs.21,10,000/-. Being the highest amount that was accepted and the plaintiff had deposited that amount.

2. The grievance of the petitioner is that had the order on Ext.P5 been passed earlier, he could have agitated the same and it was without giving an opportunity to him to challenge the order that further proceedings have been conducted.

3. On going through the facts of the case, it is seen that there is no basis for the claim at all. There were several subsequent postings of the case which the petitioner was fully aware of. Finally the order was passed by the court below closing the said petition. He did not bother to remit the balance Rs.8,00,000/-.

4. Therefore, there could be no legitimate grievance for the petitioner. However, in order to resolve the dispute between the parties a reauction could be conducted by the court below fixing the upset price at Rs.21,10,000/- where all the sharers can participate and the highest bidder would get the property. The court below is directed to hold the auction on 2.3.2015 at 2.30 p.m. and

take further steps as expeditiously as possible. The amount already deposited shall be kept in deposit and can be credited to the amount in case the plaintiff succeeds in the bid.

Registry will inform this order to the court concerned over phone.

sb.

P. BHAVADASAN,
JUDGE