

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

OP(C).No. 2828 of 2014 (O)

AGAINST THE I.A.NO.9314/2013 IN O.S.NO. 1811/2011 of II ADDITIONAL MUNSIF COURT,
THIRUVANANTHAPURAM DATED 07-11-2014

PETITIONER(S):

1. BALAKRISHNAN NAIR, AGED 73 YEARS
HINDU, S/O.PANKAJAKSHI AMMA
RESIDING AT MELEKUZHIVILA VEEDU, THAKIDIYIL
THANNIVILA, BALARAMAPURAM P.O, THIRUVANANTHAPURAM
2. V.VISWAMBHARAN NAIR, AGED 72 YEARS
HINDU, S/O.PANKAJAKSHI AMMA
RESIDING AT CHANDRIKA BHAVAN, KUZHIVILA
THIRUVIKKAL P.O, THIRUVANANTHAPURAM
3. V.RAVEENDRAN NAIR, AGED 67 YEARS
HINDU, S/O.PANKAJAKSHI AMMA, RESIDING AT SANDHYA NIVAS
MOOLAYIKONAM, PRASANTH NAGAR, MEDICAL COLLEGE P.O
THIRUVANANTHAPURAM
4. V.SASIDHARAN NAIR, AGED 67 YEARS
HINDU, S/O.PANKAJAKSHI AMMA
RESIDING AT KUZHIVILA VEEDU, THIRUVIKKAL P.O
THIRUVANANTHAPURAM
5. VIJAYAKUMARAN NAIR, AGED 60 YEARS
HINDU, S/O.PANKAJAKSHI AMMA, RESIDING AT SANDHYA NIVAS
MOOLAYIKONAM, PRASANTH NAGAR, MEDICAL COLLEGE P.O
THIRUVANANTHAPURAM
6. SANTHOSH, AGED 44 YEARS
HINDU, S/O. MANOHARAN NAIR
RESIDING AT KARIYARAVILA VEEDU, THIRUVIKKAL P.O
THIRUVANANTHAPURAM
7. ANILKUMAR, AGED 43 YEARS
HINDU, S/O. MANOHARAN NAIR
RESIDING AT KARIYARAVILA VEEDU, THIRUVIKKAL P.O
THIRUVANANTHAPURAM
8. BEENA, AGED 41 YEARS
HINDU, D/O.MANOHRAN NAIR,
RESIDING AT KARIYARAVILA VEEDU
THIRUVIKKAL P.O, THIRUVANANTHAPURAM

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SMT.R.BINDU
SRI.T.S.ABDUL KHADER

RESPONDENT(S):

P.SANTHAKUMARI, AGED 62 YEARS
D/O.PANKAJAKSHI AMMA, HINDU
RESIDING AT KUZHIVILA VEEDU, THURUVIKKAL P.O
THIRUVANANTHAPURAM ,PIN 695 011

BY ADV. SRI.K.S.MADHUSOODANAN
BY ADV. SRI.THOMAS CHAZHUKKARAN
BY ADV. SRI.P.K.RAKESH KUMAR
BY ADV. SRI.K.S.MIZVER
BY ADV. SMT.K.M.RAMYA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 14-01-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 2828 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE PARTITION DEED NO 3458 OF 1963 DATED 28-08-1963

EXHIBIT P2 TRUE COPY OF THE TAX RECEIPT DATED 14-05-2004 STANDING IN THE NAME OF PANKAJAKSHI AMMA IN RESPECT OF THE PROPERTY

EXHIBIT P3 TRUE COPY OF THE BUILDING TAX RECEIPT ISSUED BY THE THIRUVANANTHAPURAM CORPORATION DATED 22-03-2009 STANDING IN THE NAME OF PANKAJAKSHI AMMA

EXHIBIT P4 TRUE COPY OF THE RE-SURVEY PLAN BY THE RE-SURVEY AUTHORITY IN RESPECT OF PANKAJAKSHI AMMA

EXHIBIT P5 TRUE COPY OF THE PLAINT IN O.S NO 1811 OF 2011 ON THE FILE OF THE COPURT OF THE IIND ADDITIONAL MUNSIFF COURT,THIRUVANANTHAPURAM

EXHIBIT P6 TRUE COPY OF THE WRITTEN STATEMENT IN O.S NO 1811 OF 2011 ON THE FILE OF THE IIND ADDITIONAL MUNSIFF COURT,THIRUVANANTHAPURAM

EXHIBIT P7 TRUE COPY OF THE REPLICATION DATED 20-09-2012 IN O.S NO 1811 OF 2011 ON THE FILE OF THE IIND ADDITIONAL MUNSIFF COURT,THIRUVANANTHAPURAM

EXHIBIT P8 TRUE COPY OF THE COMMISSION APPLICATION I.A NO 9314 OF 2013 IN O.S NO 1811 OF 2011 ON THE FILES OF THE IIND ADDITIONAL MUNSIFF COURT, THIRUVANANTHAPURAM

EXHIBIT P9 TRUE COPY OF THE OBJECTION FILED BY THE PLAINTIFFS TO THE COMMISSION APPLICATION DATED 16-01-2014

EXHIBIT P10 TRUE COPY OF THE ORDER DATED 07-11-2014 IN IA NO 9314 OF 2013 IN O.S NO 1811 OF 2011 ON THE FILE OF THE IIND ADDITIONAL MUNSIFF COURT,THIRUVANANTHAPURAM(ADDITIONAL MUNSIFF-II)

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.2828 of 2014

Dated this the 14th day of January, 2015

JUDGMENT

Petition under Article 227 of the Constitution of India. The subject matter of challenge in this petition is the order passed by the learned Munsiff, Thiruvananthapuram on I.A.No.9314 of 2014 in O.S.No.1811 of 2011. The suit is one for partition of the properties. The petitioners and respondent herein are the plaintiffs and defendant respectively in the suit. Ext.P5 is the plaint in the suit. According to the petitioners, each of them and the respondent are entitled to one seventh share over the property. The property belonged to their deceased mother. The petitioners would contend that they have co-ownership right over the property along with the defendant.

2. Ext.P6 is the written statement filed by the respondent/defendant raising a contention that her husband Shri G.Krishnan Nair has constructed a residential-cum-shop building on the northern side of the plaint schedule property and he has prescribed right and title over the property by adverse possession and limitation. It is pertinent to note that husband of the defendant is not a party to the partition suit.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. Learned counsel for the petitioners submitted that the matters required to be reported by the Commissioner as seen in Ext.P8 application have no connection with the issues to be resolved in the partition suit. Ext.P8 would show that the Commissioner is wanted to inspect the property and report about existence of buildings not only in the plaint schedule property, but also in the adjoining property. That apart, whether electric and water connections have been given to the building in the plaint schedule property are also matters sought to be reported by the Commissioner. Besides, there is a request that the Commissioner has to report as to who is in possession of the property. All these matters, according to me, are not relevant in a suit for partition, that too at this stage. The order passed by the learned Munsiff does not show any reason to find that the matters now sought to be reported by the Commissioner are relevant for adjudication of the case. Considering the rival contentions raised by the parties in the plaint and in the written statement and also considering the nature of the suit, I am of the definite view that the commission application of this nature is not warranted at this stage of the suit. In a preliminary decree the court is only expected to consider whether the property is available for partition and if so, what is the extent

assignable to each of the co-owners. For deciding that question, the matters now sought to be reported by the Commissioner are totally irrelevant. Therefore, the impugned order is not sustainable.

In the result the order on I.A.No.9314 of 2014 in O.S.No.1811 of 2011 passed by the learned II Additional Munsiff, Thiruvananthapuram is hereby set aside. The court below shall expedite trial of the case and dispose of the same as expeditiously as possible.

A. HARIPRASAD, JUDGE.

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