

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP(C).No. 2944 of 2014 (O)

**I.A. NO.5566/2011 IN OS. NO.404/1983 OF ADDITIONAL MUNSIF COURT,
IRINJALAKUDA.**

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PETITIONER(S):

**TREESA, AGED 35 YEARS,
D/O.KUNJUVAREED, EAST KORATTY, THIRUMUDIKUNNU DESOM,
KIZHAKUMURY VILLAGE, MUKUNDAPURAM TALUK.**

BY ADV. SRI.G.SREEKUMAR (CHELUR).

RESPONDENT(S):

- 1. THRESSIA, D/O.PAYYAPPILLY OUSEPH,
KORATTY EAST DESOM, KIZHAKUMURI VILLAGE,
MUKUNDAPURAM TALUK, W/O.PATHADAN OUSEPH,
CHIEENI THIRUMUDIKUNNU HOSPITAL EAST, PIN-680 001.**
- 2. MARY,
D/O.PAYYAPILLY DEVASSY, PALAPPILLY DESOM,
MELOOR VILLAGE, MUKUNDAPURAM TALUK,
W/O.PULLAN ANTHONY, PIN-680 001.**
- 3. JOSE,
S/O.PAYYAPILLY DEVASSY, CHAYAPANKUZHY DESOM,
KUTTICHIRA VILAGE, MUKUNDAPURAM TALUK, PIN-680 001.**
- 4. THOMAS, S/O.PAYYAPILLY DEVASSY,
MARATHAKARA DESOM VILLAGE,
THRISSUR TALUK, PIN-680 001.**
- 5. JOHNY, S/O.PAYYAPILLY DEVASSY,
POOTHANKUTTY DESOM, MOOKANNUR VILLAGE,
ALUVA TALUK, PIN-682 028.**
- 6. ALPHONSA,
D/O.PAYYAPILLY DEVASSY, POKKUNNU DESOM,
MOOKANNUR VILLAGE, ALUVA TALUK, PIN-682 028.**
- 7. PHILOMINA, D/O.PAYYAPILLY DEVASSY,
CHAYAPANKUZHI DESOM, KUTTICHIRA VILLAGE,
MUKUNDAPURAM TALUK, PIN-680 001.**

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- 8. DEVASSY, S/O.PANADAN OUSEPH,
PALISSERY DESOM, KARUKUTTY VILLAGE,
ALUVA TALUK, PIN-682 028.**
- 9. ANTHONY, S/O.PANADAN OUSEPH,
PALISSERY DESOM, KARUKUTTY VILLAGE,
ALUVA TALUK, PIN-682 028.**
- 10. POULOSE, S/O.PANADAN OUSEPH,
PALISSERY DESOM, KARUKUTTY VILLAGE,
ALUVA TALUK, PIN-682 028.**
- 11. ALPHONSA, D/O.PANADAN DEVASSY,
PILLY DESOM, MOOKANNUR VILLAGE,
ALUVA TALUK, PIN-682 028.**
- 12. XAVIER, S/O.PANADAN DEVASSY, PALISSERY DESOM,
KARUKUTTY VILLAGE, ALUVA TALUK, PIN-682 028.**
- 13. MARY, D/O.PANADAN DEVASSY,
PILLY DESOM, MOOKANNUR VILLAGE,
ALUVA TALUK, PIN-682 028.**
- 14. KUNJUVAREED,
S/O.PAYYAPILLY OUSEPH, EAST KORATTY,
THIRUMUDIKUNNU DESOM, KIZHAKUMURI VILLAGE,
MUKUNDAPURAM TALUK, PIN-680 001.**
- 15. ALPHONSA, D/O.PAYYAPILLY ROAS,
EAST KORATTY DESOM, KIZHAKUMURI VILLAGE,
MUKUNDAPURAM TALUK, C/O.ST.JOSEPH ORPHANAGE,
PALAZHI, THRISSUR DISTRICT-680 001.**

**R2 TO R7 & R9 TO R13 BY SRI.RENJITH THAMPAN, SENIOR ADVOCATE.
ADV. SMT.P.R.REENA.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

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APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: A TRUE COPY OF THE JUDGMENT IN AS.NO.62 OF 89
DATED 10.04.1995 ON THE FILE OF THE ADDL. SUB COURT,
IRINJALAKUDA.
- EXT.P2: A TRUE COPY OF THE DOCUMENT BEARING NO.739 OF 96
DATED 24.02.1996 OF THE ANNAMANADA SRO.
- EXT.P3: A TRUE COPY OF THE PURCHASE CERTIFICATE IN THE NAME OF
THE FATHER OF THE PETITIONER DATED 16.10.89 OF THE
IRINJALAKUDA LAND TRIBUNAL.
- EXT.P4: A TRUE COPY OF THE ORDER PASSED IN IA.NO.5566 OF 2011 IN
OS.NO.404 OF 83 DATED 20.11.2014 ON THE FILE OF THE ADDL.
MUNSIFF COURT, IRINJALAKUDA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

B.KEMAL PASHA, J.

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O.P.(C).No.2944 of 2014

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Dated this the 21st day of July, 2015

J U D G M E N T

A partition suit of 1983 was filed by the plaintiff claiming her 1/5th share over the plaint schedule properties. The suit was decreed on which an appeal was filed. The first appeal was also dismissed by confirming the judgment and decree passed by the trial court.

2. The 2nd defendant alone filed a second appeal before this Court. The same was dismissed for default on 21.10.2010. In the meantime, it seems that the 2nd defendant, who is also entitled to 1/5th share alone in the properties, has executed a settlement deed in respect of the whole property in favour of his daughters.

3. I.A.No.5566 of 2011 was filed by some of the sharers for the appointment of a Commissioner for getting the final decree passed. The 2nd defendant has filed a

memo before the court below stating that he has already transferred the properties in favour of his daughters. Whatever it is, such transfer is limited to his 1/5th share alone over the property.

4. It seems that the court below has entered a finding in Exhibit P4 that the said settlement deed is a fraudulent document. It seems that the said observation by the court below is quite unfounded. True that it is a document *pendente lite*. At the same time, it cannot be said that the 2nd defendant could not have executed such a document in respect of his 1/5th share over the property. Whatever be the contents of the said document, the same is valid only with regard to his 1/5th share over the property.

5. The 2nd defendant is now no more. It is better for his legal representatives also to come on record. Let them be also on record, for which the plaintiff will file a petition before the court below. There need not be the question of any further preliminary decree in the matter as the share to be allotted to the 2nd defendant will go to his own daughters,

who are his legal representatives. The learned counsel for the petitioner has pointed out that the petitioner is taking steps for getting the Second Appeal re-admitted.

This Original Petition (Civil) is closed by directing the plaintiff to bring the legal representatives of deceased 2nd defendant on record. Further, it seems that the court below has appointed a Village Officer for carrying out the survey. Instead of that, the court below can either depute the Taluk Surveyor or a Private Surveyor in the matter.

Sd/-

B.KEMAL PASHA
JUDGE