IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RSA.No. 15 of 2012 (B)

AGAINST THE JUDGMENT & DECREE IN AS 108/2009 OF SUB COURT, PAYYANNUR DATED 01-10-2011

AGAINST THE JUDGMENT & DECREE IN IA NO. 1908/2000 IN OS.NO. 260/1991 OF MUNSIFF COURT, THALIPARAMBA DATED 20-07-2009

APPELLANTS :

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1. **ELLIKKAL JOSE**
   S/O.ELLIKKAL MARIYAMMA, AGED 54 YEARS, AGRICULTURIST
   NEDIYENGA AMSOM AND DESOM, TALIPARAMBA TALUK
   KANNUR DISTRICT.

2. **ANU JOSE @ ANNAMMA,**
   W/O.ELLIKKAL JOSE, AGED 48 YEARS
   NEDIYENGA AMSOM AND DESOM, TALIPARAMBA TALUK
   KANNUR DISTRICT.

   BY ADVS.SRI.M.SASINDRAN
   SRI.SATHEESHAN ALAKKADAN

RESPONDENT(S) :

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1. **ELLIKKAL MARYKUTTY**
   D/O.MARIYAMMA, NEDIYENGA AMSOM AND DESOM
   TALIPARAMBA TALUK, KANNUR-670141.

2. **IKKARATTU VALSAMMA,**
   W/O.JOHNY, ALAKODE AMSOM, ARANGAM DESOM
   TALIPARAMBA TALUK, KANNUR DISTRICT-670141.

3. **MULAYANICKAL SISILY,**
   W/O.JAMES, AGED 49 YEARS, MUNDANOOR
   KALLYAD AMSOM, NUCHIYAD DESOM, TALIPARAMBA TALUK
   KANNUR DISTRICT-670141.

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4. ELLIKKAL JOHNSON,
S/O.MARIYAMMA, NEDIYENGA AMSOM AND DESOM
KARAYATHUMCHAL, TALIPARAMBA TALUK,
KANNUR DISTRICT-670141.

5. ELLIKKAL THOMAS,
S/O.MARIYAMMA, NEDIYENGA AMSOM AND DESOM
KARAYATHUMCHAL, TALIPARAMBA TALUK,
KANNUR DISTRICT – 670 141
(HOUSE NUMBER AND WARD NUMBER NOT KNOWN)

R1 BY ADV. SRI.MAHESH V. RAMAKRISHNAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

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R.S.A.No.15 of 2012.

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Dated this the 27th day of October, 2015.

J U D G M E N T

The final decree in a suit for partition is under challenge in this Second Appeal. Defendants 2 and 7 in the suit are the appellants.

2. There are six sharers for the three items of properties sought to be partitioned in the suit. The trial court passed a preliminary decree declaring the 1/6 share each of the plaintiff and defendants 2 to 6. In the preliminary decree, it was also directed that out of the property allotted to the share of the second defendant, 1 acre shall be given to the seventh defendant. It was further directed in the preliminary decree that the house in plaint schedule item No.1 property shall be allotted to the second

defendant. Pursuant to the preliminary decree, an application for passing of the final decree was filed by the plaintiff. In the final decree proceedings, the trial court deputed an Advocate Commissioner to effect partition and the Advocate Commissioner deputed by the court submitted his report. Three plans of the properties sought to be partitioned were also appended to the report of the Advocate Commissioner. Plan No.1 pertains to item No.3 property, plan No.2 pertains to item No.2 property and plan No.3 pertains to item No.1 property. As per the report and plans, the Advocate Commissioner allotted the share of the plaintiff and defendants 3 to 6 in one lot and the share of the second defendant in another lot. The second defendant filed I.A.No.1773 of 2009 seeking orders to set aside the report and plans submitted by the Advocate Commissioner. The trial court dismissed the said application holding that the second defendant has not substantiated the objections raised by him to the report of the Advocate Commissioner.

Thereafter, a final decree was passed in the suit in accordance with the report and plans submitted by the Advocate Commissioner. Defendants 2 and 7 took up the matter in appeal. The essence of the contentions raised by defendants 2 and 7 before the lower appellate court was that the allotment of properties made by the Advocate Commissioner is inequitable. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. Defendants 2 and 7 who are aggrieved by the final decree as confirmed in appeal have thus come up in this Second Appeal.

3. Heard the learned counsel for the appellants as also the learned counsel for the first respondent, the plaintiff.

4. The learned counsel for the appellants reiterated that the allotment of properties made by the Advocate Commissioner is inequitable. According to the learned counsel, the second defendant has not been allotted

any portion of item No.3 property which is a better property when compared to item Nos.1 and 2 properties. He also contended that the valuation of item No.3 property made by the Advocate Commissioner is grossly inadequate. The learned counsel further contended that though a way has been provided in plan 3 connecting the share of properties allotted to the plaintiff and defendants 3 to 6 on either side of the share of property allotted to the second defendant, he has not been given any access to the said way.

5. I do not find any merit in the contentions raised by the learned counsel. As indicated above, there was a direction in the preliminary decree that the building in item No.1 property shall be allotted to the second defendant. It is beyond dispute that the building and the appurtenant lands measuring 1.85 ½ acres have been allotted to the second defendant in terms of the direction contained in the preliminary decree. As indicated above, all the sharers are entitled to 1/6 share each in the properties.

When the building and the appurtenant land in item No.1 property is allotted to the second defendant in terms of the direction contained in the preliminary decree, it cannot be said that the allotment of the remaining property including item No.3 property to the remaining sharers is inequitable. Coming to the contention as to the valuation of item No.1 property raised by the second defendant, it is seen that one of the grounds on which the second defendant sought orders to set aside the report and plans submitted by the Advocate Commissioner as per I.A.No.1773 of 2009 was that the value of item No.3 property assessed by the Advocate Commissioner is inadequate. The said application was dismissed by the trial court holding that the second defendant has not adduced any evidence in support of the contentions raised in the application. In so far as the second defendant suffered an adverse order in the application filed raising the very same contention on the ground that he has not substantiated the said contention by

adducing evidence, he is not entitled to raise the said issue again in this appeal. Coming to the contention raised by the second defendant that he has not been granted any access to the way provided connecting the portions of the property provided to plaintiff and defendants 3 to 6 in item No.1 property, it is seen from plan No.3 that the second defendant has been allotted a portion from item No.1 property and the portions lying on the east and west of the portion allotted to the second defendant have been allotted to plaintiff and defendants 3 to 6. Since the portions of the property allotted to the plaintiff and defendants 3 to 6 are not lying contiguously, the Advocate Commissioner provided a way connecting the two portions of properties allotted to them. The way is also a part of the property allotted to the plaintiff and defendants 3 to 6 and the said allotment has been made after valuing the property shown as the way. In so far as the said portion of the property is part of the allotment made to plaintiff and defendants 3 to 6, the

second defendant cannot claim any access to the said portion of the property. There is no question of law, much less any substantial question of law, involved in this matter. The Second Appeal is, therefore, without any merit and the same is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.