

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

RSA.No. 1279 of 2009 ()

**(AGAINST THE JUDGMENT IN AS.NO. 8/2003 OF ADDITIONAL DISTRICT COURT
(ADHOC)-1, MANJERI DATED 11-04-2008)**

**(AGAINST THE JUDGMENT IN OS.NO. 60/1998 OF MUNSIFF MAGISTRATE COURT,
PERINTHALMANNA DATED 05-11-2002)**

APPELLANTS/APPELLANTS/DEFENDANTS 5 TO 7:

1. VARIKKODAN SAINABA, D/O.LATE ABDULLA,
PANG AMSOM, DESOM, P.O. PADAPPARAMBA,
MALAPPURAM DISTRICT.
2. AYISHA, W/O.LATE KUNHALI, PARAKKAL HOUSE,
PANG AMSOM, DESOM, P.O. PADAPPARAMBA,
MALAPPURAM DISTRICT.
3. NABEESA, D/O.LATE ABDULLA, VARIKKODAN HOUSE,
PANG AMSOM, DESOM, P.O.PADAPPARAMBA,
MALAPPURAM DISTRICT.

BY ADV.SRI.K.M.SATHYANATHA MENON

RESPONDENT(S)/RESPONDENTS/DEFENDANTS 1 TO 4 & PLAINTIFF:

1. KUNHAMI, W/O. MOIDEENMOLLA,
KOTTAPARAMBIL HOUSE, P.O.PANG, PANG AMSOM,
DESOM, PERINTHALMANNA, MALAPPURAM DISTRICT.
2. KUNHAYISSA, D/O.LATE ALAVIKUTTY,
VALLAKKAT THODIYIL HOUSE, P.O. CHENGOTTUR,
CHENGOTTUR AMSOM, KOLKALAM DESOM,
MALAPPURAM DISTRICT.
3. NAFEESA, D/O.LATE ALAVIKUTTY,
CHENGOTTUR AMSOM, KOLKALAM DESOM,
P.O.CHENGOTTUR, MALAPPURAM DISTRICT.

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4. PATHUMMA, W/O.LATE MOOSA,
ELAMKULAM HOUSE, PANG AMSOM, DESOM,
P.O. PANG, MALAPPURAM DISTRICT.
5. V.T. MOHAMMED, S/O.LATE ALAVIKUTTY,
CHENGOTTUR AMSOM, KOLKALAM DESOM,
P.O. CHENGOTTUR, MALAPPURAM DISTRICT.

R1 TO R5 BY ADV. SRI.U.K.DEVIDAS

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

R.S.A. No.1279 of 2009

Dated 12th November, 2015.

J U D G M E N T

Defendants 5 to 7 in a suit for partition are the appellants. The suit property belonged to two persons, viz., Mariakkutty and Abdulla, as obtained by them by virtue of Ext.A1 sale deed of the year 1916. The plaintiff and defendants 1 to 4 are the successors of Mariakkutty and defendants 5 to 7 are the successors of Abdulla. The suit was filed by the plaintiff alleging that he is entitled to 16/72 share in the suit property. Defendants 5 to 7 contested the suit. The contention of defendants 5 to 7 was that the suit property was partitioned orally between Mariakkutty and Abdulla during their life time and that the property allotted to Mariakkutty as per the terms of the oral partition has been sold by her in the year 1940 itself to one Veeyakkutty Umma. The trial court accepted the case of the plaintiff and passed a decree declaring the 16/72 share of the plaintiff over the suit property. It was also declared that

defendants 1 to 4 are entitled to $\frac{8}{72}$ share each and defendants 5 to 7 are entitled to the remaining $\frac{24}{72}$ share. Defendants 5 to 7 challenged the decision of the trial court in appeal. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. Hence, this second appeal by defendants 5 to 7.

2. Heard the learned counsel for the appellants as also the learned counsel for respondents 1 to 5.

3. The learned counsel for the appellants contended that Ext.B1 document produced by defendants 5 to 7 would establish their case that there had been an oral partition of the suit property between the owners, and Mariakkutty had sold her share of the property to Veeyakkutty Umma. The learned counsel for the appellants also contended that the share of the plaintiff and defendants 1 to 4 are worked out in the suit reckoning not only the one half share of Mariakkutty over the suit property, but also the one third share of Abdulla over the property on the ground that since Abdulla died without any male issues, one third of his share over the

suit properties devolved on the plaintiff and defendants 1 to 4. According to the learned counsel, the plaintiff and defendants 1 to 4 are not entitled to any share over the suit property originally held by Abdulla, for, Abdulla had sold the suit property to defendants 5 to 7 as per Ext.B3 document.

4. In the light of the submissions made by the learned counsel for the appellants, the following questions of law were framed for adjudication:

(i) Were the courts below justified in accepting the case of the plaintiff that he is entitled to a share in the suit property in the light of Ext.B1 sale deed?

(ii) Were the courts below justified in accepting the case of the plaintiff that he is entitled to 16/72 share in the suit property in the light of Ext.B3 sale deed?

5. The fact that the property was originally held by Mariakkutty and Abdulla is not in dispute. The dispute, on the other hand, is as to whether there has been an oral partition between the owners of the property and consequent sale of the share of Mariakkutty as contended by the defendants. It is

beyond dispute that it was for defendants 5 to 7 to establish the aforesaid contention raised by them. No oral evidence was adduced on the side of defendants 5 to 7. Instead, they produced Ext.B1 document purported to have been executed by Mariakkutty in the year 1940 in respect of her share in the suit property as obtained by her in the oral partition. The courts below noticed that Ext.B1 is not a document executed by the predecessor of the plaintiff, Mariakkutty on the strength of Ext.A1 sale deed. Ext.B1, according to the courts below, is a document executed on the strength of sale deed No.3152 of 1916. The courts below also noticed that the property in Ext.B1 is not the property covered by Ex.A1. It is in the aforesaid circumstances, the courts below accepted the case of the plaintiff. In the light of the aforesaid facts, question No.(i) formulated for decision is answered against defendants 5 to 7.

6. Ext.B3, a copy of which was made available to me at the time of hearing, indicates that Abdulla had transferred the properties obtained by him as per Ext.A1 to defendants 5 to 7 as per the said document. In the said

circumstances, it cannot be said that the plaintiff and defendants 1 to 4 are entitled to one third share of Abdulla as claimed by them. Issue No.(ii) formulated for decision is thus answered in favour of defendants 5 to 7.

In the result, the second appeal is allowed in part and the decree passed by the trial court as confirmed in appeal is modified to the effect that the plaintiff is entitled to 12/72 share, the defendants 1 to 4 are entitled to 6/72 share each and defendants 5 to 7 are entitled to the remaining 36/72 share in the suit property. In all other respects, the impugned decisions are confirmed. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgS

(true copy)