

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

RFA.No. 152 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OS 95/2013 of PRL.SUB COURT,
KOTTAYAM DATED 29-10-2014

APPELLANT(S)/1ST DEFENDANT:

ARATHI V.KURUP, AGED 28 YEARS,
W/O. RENJITH RAJ, "KARTHIKA" HOUSE NO.29/2548 C,
POONITHURA VILLAGE, POONITHURA PO,
ERNAKULAM - 682 038.

BY ADV. SMT.VALSAMMA KURIAN JOSE

RESPONDENT(S)/PLAINTIFFS & 2ND DEFENDANT:

1. SUMATHIKUTTY AMMA, AGED 81 YEARS
W/O. SIVASANKARA KURUP, MATTATHINKAL HOUSE
POONITHURA VILLAGE, POONITHURA PO,
ERNAKULAM, PIN-682 038.
2. GEETHA V. KURUP, AGED 49 YEARS,
W/O. M.S. VASUDEVA KURUP, MATTATHINKAL HOUSE,
POONITHURA VILLAGE, POONITHURA PO, ERNAKULAM
PIN-682038.
3. ABHAY VISHNU SANKAR, AGED 24 YEARS,
S/O. M.S. VASUDEVA KURUP, MATTATHINKAL HOUSE
POONITHURA VILLAGE, POONITHURA P.O.,
ERNAKULAM, PIN-682038.

R1 & R2 BY ADV. SRI.MANOJ RAMASWAMY (CAVEATOR)

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
RFA No.152 of 2015
.....

Dated this the 21st day of May, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal is against a preliminary decree passed in a suit for partition.
- 2.We have heard the learned counsel for the appellant/first defendant and the learned counsel appearing for the plaintiffs.
- 3.The appellant is the first defendant. Defendants, two in number, are the children of late Vasudeva Kurup. The first plaintiff is the mother and the second plaintiff is the widow of Vasudeva Kurup. Parties are governed by the provisions of the Hindu Succession Act, 1956. In the absence of any other defence being set up through the written statement, eligibility for shares at the rate of $\frac{1}{4}$ % cannot be denied. That has been granted by the trial court. Preliminary decree has been passed, though ex parte, without

deciding any issue as to mean profits. If there is any issue raised in the written statement claiming mean profits, we are sure that, that can be looked at the final decree stage, since the preliminary decree directs that equities will be worked out at the time of passing of final decree. We do not see that the preliminary decree passed ex parte has to be set aside at this distance of time.

For the aforesaid reasons, in the light of the submissions made on either side, leaving open the equities to be worked out at the time of passing of final decree, including consideration of any claim for mean profits, if legally made, this appeal is dismissed.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(SUNIL THOMAS, JUDGE)

jg

The words “mean profits” occurring in the penultimate sentence of the penultimate paragraph of the judgment dated 21/05/2015 in R.F.A 152/2015 are corrected as “mesne profits”, vide order dated 19/08/2015 in R.F.A 152/2015.

Sd/-
Registrar (Judicial)