

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

RSA.No. 34 of 2011 ()

**AGAINST THE JUDGMENT IN AS. NO.307/2004 OF ADDITIONAL DISTRICT COURT-II,
MAVELIKKARA DATED 15/07/2010.**

**AGAINST THE JUDGMENT IN OS. NO.479/2001 OF MUNSIF COURT, MAVELIKKARA
DATED 30/07/2004.**
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APPELLANT/RESPONDENT NO.14/DEFENDANT NO.14:

**R. VENUGOPAL, S/O.BHANUMATHY AMMA,
AGED 45 YEARS, RESIDING AT KALIKKAL VEEDU,
KOTTARKAVU MURI, NOW RESIDING AT NO.162,
NARIPETH, GENGAM, MAHARASHTRA- 425 001.**

**BY ADVS.SRI.RINNY STEPHEN CHAMAPARAMPIL,
SMT.ASHA ELIZABETH MATHEW,
SRI.R.RAJESH KORMATH.**

**RESPONDENTS/RESPONDENTS 1 TO 10, 12, 13, 15 & 11/
DEFENDANTS 1 TO 10, 12, 13, 15 & 11 & PLAINTIFFS:**

**1. VIJAYAMMA, ANASWARA,
KALEEKAL VEEDU, KOTTARKAVU MURI,
MAVELIKKARA P.O., PIN-690 010.**

2. GEETHA DEVI, -DO- -DO-.

3. SUDHA DEVI, -DO- -DO-.

4. GIRI, -DO- -DO-.

5. MANOJ KUMAR, -DO- -DO-.

**6. LEKHA NAIR, LEKSHMI PRABHA,
NSS KARAYOGAM ROAD, THIRUMALA P.O.,
VALIA VILA, THIRUVANANTHAPURAM-695 001.**

7. ABIJITH NAIR, -DO- -DO-.

8. ABISHEK NAIR, -DO- -DO-.

- 9. VIJI, GENESA MANDIRAM, KOTTARKAVU MURI,
MAVELIKKARA P.O., PIN-690 101.**
- 10. VIJAYA VASUDEVAN, VIJAYALAM,
KOTTARKAVU MURI, MAVELIKKARA P.O., PIN-690 101.**
- 11. R. RAVINDRAN NAIR, KALEEKAL VEEDU,
KOTTARKAVU MURI, QUARTERS NO.63 D,
TYPE III, SECTOR III OF CHANDRA,
CHANDRAPUR, MAHARASHTRA-425 001.**
- 12. JAYAPRAKASH NARAYANAN, KALEEKKAL VEEDU,
KOTTARKAVU MURI, NOW RESIDING AT 162,
NARIPETHU, JALGAM, MAHARASHTRA- 425 001.**
- 13. LATHA NAIR, 156, BAJAJ NAGAR, NAGPUR-10.**
- 14. BHANUMATHIYAMMA, (DIED),
D/O. BHAGEERATHIAMMA, KALEEKKAL VEEDU,
KOTTARKAVU MURI, MAVELIKKARA-690 101.**
- *15. SAKUNTHALA, KALEEKAL VEEDU, KOTTARKAVU MURI,
C/O.JAYAPRAKASH NARAYANAN, 162,
NARIPETHU, JAGLAM, MAHARASHTRA-425 001. (DELETED)**

**THE LEGAL HEIRS OF RESPONDENT NO.14, ARE IN THE
PARTY ARRAY AS RESPONDENTS NO. 11 TO 13 & 15.**

*** RESPONDENT NO.15 IS DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE APPELLANT AS PER ORDER DATED 27/03/2014 IN
I.A. NO.878/2014.**

**R1 TO R5 BY ADV. SRI.BASANT BALAJI.
R12 BY ADV. SRI.NIRMAL V.NAIR.
R13 BY ADV. SMT.MERIN SONY THAMPY.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

RSA.No. 34 of 2011

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE I ATTESTED COPY OF THE DEATH CERTIFICATE
DATED 07/05/2010.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P.B.SURESH KUMAR, J.

R.S.A.No.34 of 2011

Dated this the 3rd day of December, 2015

JUDGMENT

This second appeal is preferred challenging the decision in A.S.No.307 of 2004 on the file of the District Court, Mavelikkara as also the cross objection in the said appeal.

2. A.S.No.307 of 2004 is an appeal preferred by the plaintiff in O.S.No.479 of 2001 on the file of the Munsiff Court, Mavelikkara. O.S.No.479 of 2001 is a suit for declaration and partition. Though it was held by the trial court that the plaintiff is a co-owner of the property, the suit was dismissed. The plaintiff took up the matter in appeal. The defendants preferred a cross objection in the

appeal, challenging the finding of the trial court that the plaintiff is a co-owner of the property. The records in the appeal indicate that the appeal and cross objection were finally heard on 13.7.2010. Thereupon, the appellate court dismissed the appeal and allowed the cross objection. The 14th defendant in the suit has challenged the decision in the appeal as also the decision in the cross objection.

3. In this appeal, the appellant has preferred I.A.No.3068 of 2015 praying for rejection of the appeal without prejudice to the right of the appellant to file an application for reopening of the appeal before the lower appellate court. It is stated in the affidavit filed in support of the said application that the appellant before the lower appellate court died on 30.4.2010, before the date of hearing of the appeal. Though a counter affidavit is seen filed by the respondents, there is nothing on record to indicate that the date of death of the appellant before the

lower appellate court as stated by the appellant herein is incorrect. If that be so, the appellate judgment which is impugned in the second appeal is a nullity. If the appellate judgment is a nullity, the remedy of the appellant is to move the appellate court for reopening of the appeal, as held by this Court in **Paru v. Devaki Varassiar** [1992 (2) KLT 687].

The second appeal, in the circumstances, is rejected. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm