

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

RFA.No. 852 of 2015

(AGAINST DECREE AND ORDER DATED 8.4.2015 IN F.D.I.A.NO.861/04 IN O.S.NO.187/1989
ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, PALAKKAD)

APPELLANTS/RESPONDENTS 1 TO 6/ DEFENDANTS 2 TO 7:

1. HEMALATHA, D/O. CHELLAPPAN,
RESIDING AT ULLATTIL HOUSE, KOPPAM, PALAKKAD.
2. PUSHPALATHA, D/O. CHELLAPPAN,
RESIDING AT ULLATTIL HOUSE, KOPPAM, PALAKKAD.
3. PRAMEELAKUMARI, D/O. CHELLAPPAN,
RESIDING AT ULLATTIL HOUSE, KOPPAM, PALAKKAD.
4. PRASANNAKUMARI, D/O. CHELLAPPAN,
RESIDING AT ULLATTIL HOUSE, KOPPAM, PALAKKAD.
5. MRIDULADEVI, D/O. CHELLAPPAN,
RESIDING AT ULLATTIL HOUSE, KOPPAM, PALAKKAD.
6. SHEEBA, D/O. CHELLAPPAN,
RESIDING AT ULLATTIL HOUSE, KOPPAM, PALAKKAD.

BY ADVS.SRI.SANTHEEP ANKARATH
SRI.Y.JAFAR KHAN

RESPONDENTS/PETITIONER & RESPONDENTS 7 TO 10
PLAINTIFF & DEFENDANTS 8 TO 11:

1. THANKAMANI, S/O. MALLI, ULLATTIL HOUSE, KOPPAM
PALAKKAD DISTRICT - 678 001.
2. THATHA, D/O. MALLI, NEAR NO. III ANGANA VADI, PALLIPPARAMBU
ALATHUR, PALAKKAD - 678 541.
3. RUGMANI, D/O. MALLI, APPAKKADU VEEDU, VENGASSERY
MANNUR, PALAKKAD DISTRICT - 679 516.
4. MURALEEDHARAN, S/O. MADHAVAN, NEAR NO. III ANGANA VADI,
PALLIPPARAMBU, ALATHUR, PALAKKAD - 678 541.
5. SYAMALA, D/O. MADHAVI, NEAR NO. III ANGANA VADI,
PALLIPPARAMBU, ALATHUR, PALAKKAD - 678 541.

R1 BY ADV. SRI.T.CSURESH MENON

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

R.F.A.No.852 of 2015

Dated this the 9th day of December, 2015

JUDGMENT

Antony Dominic, J.

Heard the counsel for the appellants and the learned counsel appearing for the respondents who entered appearance for caveator.

2. This appeal is filed against the decree and order dated 8.4.2015 in F.D.I.A.No.861/04 in O.S.187/1989 on the file of the Sub Court, Palakkad. O.S.187/89 was filed by the first respondent praying for partition of item Nos. 1 and 2 in the plaint A schedule property. In the suit, a preliminary decree was passed on 19th July 1991. After several rounds of litigations between the parties, final decree has now been passed, which is impugned in this appeal.

3. It is contended by the learned counsel for the appellant that by virtue of the preliminary decree and the orders passed by the Appellate Court, allotment to the first respondent plaintiff could only be from item No.2, which is separately shown in the plan attached to this appeal memorandum. It is stated that despite that aforesaid binding decree, the court below has again passed the final decree allotting a portion of item

No.1, as a road leading to item No.2, to the first respondent. This, according to the counsel, is the illegality committed by the trial court.

4. Having considered the submission, we are inclined to think that the final decree cannot be interfered on the ground urged. As is evident from the plan, which factual position is confirmed by the counsel also, item No.2 allotted to the first respondent is a plot of land which does not have any access to the road. Since an access was essential to be provided, the only option available to the court below was to provide a road access by ear-marking a portion of item No.1. Such a practical approach adopted by the trial court, being the only course that was possible, cannot be found to be an illegality with the final decree. Therefore, we do not find any reason to interfere with the final decree.

Appeal fails and it is accordingly dismissed.

Sd/-
ANTONY DOMINIC
JUDGE

Sd/-
P.V.ASHA
JUDGE