

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937**

**RSA.No. 1330 of 2012 (G)**  
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**(AGAINST THE JUDGMENT AND DECREE IN AS.NO. 50/2009 OF ADDL.SUB COURT,  
IRINJALAKUDA DATED 04-06-2012)**

**(AGAINST THE JUDGMENT IN OS.NO. 322/2004 OF MUNSIFF COURT,  
KODUNGALLUR DATED 24-03-2009)**  
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**APPELLANTS/APPELLANTS/PLAINTIFFS:**  
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1. SIVASANKARAN,  
S/O. MULLASSERY MADHAVAN,  
LOKAMALESWARAM VILLAGE & DESOM,  
KODUNGALLUR TALUK.
2. SATHYAVATHY,  
W/O. MULLASSERY SIVASANKARAN,  
LOKAMALESWARAM VILLAGE & DESOM,  
KODUNGALLUR TALUK.
3. DILEEP,  
S/O. MULLASSERY SIVASANKARAN,  
LOKAMALESWARAM VILLAGE & DESOM,  
KODUNGALLUR TALUK.

**BY SRI.T.KRISHNAN UNNI,(SENIOR ADVOCATE)  
ADVS. SRI.M.SHAJU PURUSHOTHAMAN  
SRI.K.S.RAJESH**

**RESPONDENTS/RESPONDENTS/DEFENDANTS:**  
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1. ASOKAN, S/O. IRATT VELUKUTTY,  
EDAVILANGU VILLAGE & DESOM,  
KODUNGALLUR TALUK-680 664.
2. SASEEDHARAN, S/O. IRATT VELUKUTTY,  
EDAVILANGU VILLAGE & DESOM,  
KODUNGALLUR TALUK-680 664.
3. RADHAKRISHNAN, S/O. IRATT VELUKUTTY,  
EDAVILANGU VILLAGE & DESOM,  
KODUNGALLUR TALUK-680 664.

**R.S.A.NO.1330/2012**

4. **BABURAJ, S/O. IRATT VELUKUTTY,  
EDAVILANGU VILLAGE & DESOM,  
KODUNGALLUR TALUK-680 664.**
5. **SUNDARAN, S/O. IRATT VELUKUTTY,  
EDAVILANGU VILLAGE & DESOM,  
KODUNGALLUR TALUK-680 664.**
6. **V.RAJAN,  
S/O. VADAKKEDATHUVEETIL A.R.MANNADIAR,  
LOKAMALESWARAM VILLAGE & DESOM,  
KODUNGALLUR TALUK-680 664.**

**R3 & R4 BY SRI.P.JACOB VARGHESE,(SENIOR ADVOCATE)  
ADV. SRI.T.RASWAS**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION  
ON 22-12-2015, ALONG WITH RSA. NO. 1331 OF 2012, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:**

**sts**

**P.B.SURESH KUMAR, J.**

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**R.S.A. Nos.1330 & 1331 of 2012**  
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**Dated 22<sup>nd</sup> December, 2015.**

**J U D G M E N T**

These appeals are preferred challenging the common judgment in A.S.Nos.50 and 52 of 2009 on the file of the Sub Court, Irinjalakkuda. Among the said appeals, A.S.No.50 of 2009 was an appeal preferred against the decision in O.S.No.322 of 2004 on the file of the Munsiff Court, Kodungallur and A.S.No.52 of 2009 was an appeal preferred against the decision in O.S.No.480 of 2004 on the file of the said court. As the suits were tried jointly, treating O.S.No.480 of 2004 as the lead case, I am referring to the parties in this judgment, as they appear in O.S.No.480 of 2004.

2. O.S.No.480 of 2004 is a suit for recovery of possession based on title. The subject matter of the suit is a room. The land on which the plaint schedule room situates originally belonged to one Ramakrishnan. The properties held by

Ramakrishnan were partitioned among his legal representatives as per Ext.A4 partition deed. The property described in schedule A to Ext.A4 partition deed was allotted to the sons of Ramakrishnan and the property described in schedule B to Ext.A4 partition deed was allotted to one of the daughters of Ramakrishnan, namely, Valsala. The property allotted to the sons of Ramakrishnan as per Ext.A4 partition deed was 11.75 cents of land and the building therein, excluding the portion of the said building which was allotted to the share of Valsala as per the very same document. The plaintiffs are the assignees of the sons of Ramakrishnan in respect of the property described in schedule A to Ext.A4 partition deed and the defendants are the assignees of Valsala in respect of the portion of the building described in schedule B to the said partition deed. Ext.B3 is the assignment deed executed by Valsala in favour of the defendants. Ext.B3 contains two items of properties. It is recited in Ext.B3 that the room described in schedule B to the document is a room constructed by Valsala in the open space attached to the portion of the building

allotted to her share as per Ext.A4 partition deed. Few years after Ext.B3, O.S.No.322 of 2004 was filed by the defendants seeking a decree of permanent prohibitory injunction restraining the plaintiffs from trespassing into the properties covered by Ext.B3 assignment deed, alleging that the plaintiffs are attempting to trespass into the plaint schedule room. The plaintiffs, thereupon filed O.S.No.480 of 2004 seeking a decree for recovery of possession of the plaint schedule room alleging that the same is part of the property allotted to their predecessor as per Ext.A4 partition deed. The defendants resisted the suit contending, among others, that their predecessor Valsala had obtained an extent of 4.366 cents of property and the portion of the building therein and that the plaint schedule room is constructed by their predecessor within the boundaries of the property obtained by her. The trial court found that Valsala, the predecessor of the defendants, had obtained only the portion of the building allotted to the predecessors of the plaintiffs as per Ext.A4 partition deed; that Valsala had no right in the property beyond the boundaries of

the building portion and that therefore, the plaint schedule room can only be part of the property obtained by the predecessors of the plaintiffs. In the light of the said findings, O.S.No.480 of 2004 was decreed and O.S.No.322 of 2004 was dismissed. The defendants challenged the decision of the trial court in appeal. The appellate court, on a reappraisal of the evidence, confirmed the decision of the trial court, though on different grounds. The defendants who are aggrieved by the concurrent decisions against them have thus come up in these second appeals.

3. Heard the learned Senior Counsel for the appellants as also the learned Senior Counsel for the respondents.

4. As noted above, the case of the plaintiffs is that the plaint schedule room is part of the property included in schedule A to Ext.A4 partition deed. The case of the defendants, on the other hand, is that the plaint schedule room is a room constructed by their predecessor in the land adjoining the building portion included in schedule B to Ext.A4 partition deed. The dispute is as to the ownership of the plaint

schedule room. In the description of the property included in schedule B to Ext.A4 partition deed, it is recited that the extent of property given to the allottee is 4 cents and 366 sq. links. Relying on the said part of the description, the learned Senior Counsel for the appellants contended that Valsala, the predecessor of the defendants, has obtained 4 cents and 366 sq. links of property and that the plaint schedule room has been constructed by her within the said 4 cents and 366 sq. links of property. According to him, the said 4 cents and 366 sq. links has not been identified in the suit and the decree given to the plaintiffs without identifying correctly the property obtained by the predecessor of the defendants is unsustainable.

5. In the light of the contention raised by the learned counsel for the appellant, the properties obtained by the predecessors of the parties as per Ext.A4 partition deed need to be ascertained. The description of property in schedule A to Ext.A4 partition deed reads thus :

‘ജന്മം ടി സർവ്വെ നമ്പ് വഹകളിൽ നിന്നും തിരിച്ച്  
മേൽനമ്പ്രാധാരങ്ങൾ പ്രകാരം സിദ്ധിച്ച വഹകളും അതിൽ കിഴക്കും  
തെക്കും അതിരുകളിൽ ഉള്ള മതിലും ശേഷം ഭാഗങ്ങളിൽ ഇരുനിലയി

ൽ പണിയിച്ച കോൺക്രീറ്റ് കെട്ടിടത്തിൽ ലോഡ്ജും പീടിക മുറികളുമായി നടത്തി വരുന്നതുമായ കെട്ടിടത്തിലെ ബി പട്ടികയിൽ ചേർത്തു വിവരം പറയുന്ന മുറികൾ ഒഴികെ ടി മുറികളുടെ മുകളിലത്തെ ഭാഗം ഉൾപ്പെടെയുള്ളതും കൊടുങ്ങല്ലൂർ മുൻസിപ്പാലിറ്റിയിൽ നിന്നും IX/531, 532, 533 എന്നീ നമ്പ്രുകളായി നമ്പ്ര് ഇട്ടിട്ടുള്ളതുമായ കെട്ടിടവും സകല ആറാഴ്ച ചുമയങ്ങളും സെന്റ് പതിനൊന്നമുക്കാൽ.'

The description of property in schedule B to Ext.A4 reads thus :

"ജന്മം ടി സർവ്വെ നമ്പ്ര് വഹകളിൽ കോൺക്രീറ്റ് ചെയ്ത രണ്ട് നിലയിൽ പീടിക മുറികളും ലോഡ്ജും ഹോട്ടലുമായി നിർമ്മിച്ചിട്ടുള്ള കെട്ടിടത്തിലെ താഴത്തെ നിലയിൽ തെക്കെ അറ്റത്തുള്ളതും തെക്കു പടിഞ്ഞാറെ ഭിത്തിയിൽ നിന്നും കിഴക്കോട്ട് 40 അവിടന്ന് തെക്കോട്ട് 17 അവിടന്ന് കിഴക്കോട്ട് 5 അവിടന്ന് തെക്കോട്ട് 20 അവിടന്ന് കിഴക്കോട്ട് 29 അവിടന്ന് തെക്കോട്ട് 10 അവിടന്ന് കിഴക്കോട്ട് 17 അവിടന്ന് വടക്കോട്ട് 47 അവിടന്ന് പടിഞ്ഞാട്ട് 14 അവിടന്ന് വടക്കോട്ട് 34 അവിടന്ന് പടിഞ്ഞാട്ട് 43 അവിടന്ന് തെക്കോട്ട് 16 അവിടന്ന് പടിഞ്ഞാട്ട് 13 അവിടന്ന് വടക്കോട്ട് 11 അവിടന്ന് പടിഞ്ഞാട്ട് 27 അവിടന്ന് തെക്കോട്ട് 29 എന്നീ ലിംഗ്സ് അതിരളവുകളുള്ള പീടിക മുറി സെന്റ് നാലും ചഃ ലിംഗ്സ് മൂന്നുറ്റി അറുപത്താറും"

It is evident from the aforesaid descriptions that what is allotted to the predecessor of the defendants, Valsala as per Ext.A4 is only a portion of the building allotted to the predecessors of the plaintiffs. The said fact is evident from the recital in Ext.A4 that

the predecessor of the defendants will not have any right in the remaining part of the building. The said recital in Ext.A4 reads thus :

“ബി പട്ടികയായി ചേർത്തിരിക്കുന്ന ഹോട്ടൽ നടത്തുന്ന മുറിയും സ്റ്റോർ മുറിയും എ പട്ടിക 1-ാം നമ്പ് വഹകളിൽ ഉൾപ്പെട്ടു കിടക്കുന്നതിനാൽ പ്രത്യേകമായി തിരിച്ച് വേർപ്പെടുത്തുവാൻ സാധിക്കാത്തത് കൊണ്ട് ബി പട്ടികയായി ചേർത്തിരിക്കുന്ന മുറികളിന്മേൽ അല്ലാതെ ടി മുറികളുടെ മുകൾ ഭാഗത്തോ ടി മുറികളുടെ ചുറ്റുമുള്ള ടി കെട്ടിടത്തിന്റെ ഇതര ഭാഗങ്ങളിലോ ബി-പട്ടികക്കാരിയ്ക്ക് യാതൊരു അധികാരവും അവകാശവും ബാധ്യതയും ഉണ്ടായിരിക്കുന്നതല്ലെന്നും പ്രത്യേകം നിശ്ചയിച്ചിരിക്കുന്നു.”

The aforesaid fact is also evident from the recitals in Ext.A4 partition deed as to the manner in which mutation of the properties will have to be effected by the allottees. In that context, it is recited in the document that since the predecessor of the defendants was given only a portion of the building, the entire land on which the building situates will have to be mutated by the predecessors of the plaintiffs. It is thus clear that there was no intention at all to give any portion of the property to the predecessor of the defendants Valsala at the

time of execution of Ext.A4 partition deed. If the predecessor of the defendants was intended to be given only the building portion referred to in schedule B to Ext.A4 partition deed and nothing else, the extent of 4 cents and 366 sq. links referred to in schedule B to Ext.A4 can only be in relation to the area of the building portion allotted to the sharers. If that be so, the view taken by the courts below that the plaint schedule room is part of the property obtained by the predecessors of the plaintiffs as per Ext.A4 partition deed cannot be said to be incorrect, especially in the absence of any evidence to show that the predecessor of the defendants erected any structures in the property. The second appeals, in the circumstances, are devoid of merits and the same are, accordingly, dismissed in limine.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

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