

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

RSA.No. 245 of 2011 ( )

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AGAINST THE DECREE AND JUDGMENT IN AS NO. 13/2009 of III ADDITIONAL DISTRICT  
COURT, THIRUVANANTHAPURAM DATED 13-10-2010

AGAINST THE DECREE AND JUDGMENT IN OS NO.869/2007 of PRINCIPAL MUNSIF  
COURT, THIRUVANANTHAPURAM DATED 11-11-2008

APPELLANT(S)/APPELLANT/DEFENDANT:

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EDWARD KOSHY, S/O.T.K.KOSHY, AGED 57 YEARS,  
RESIDING AT VALAMCODE HOUSE  
AYANIARATHALA PURAYIDAM, BARTON HILL, KUNNUKUZHY  
VANCHIYOOR, THIRUVANANTHAPURAM.

BY ADVS.SRI.M.R.ANANDAKUTTAN  
SMT.M.A.ZOHRA  
SRI.R.S.MADHU

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS:

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1. MARY KOSHY, D/O.LILLY KOSHY, AGED 71 YEARS,  
E.F. 7/226, P.TCHACKO NAGAR  
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM. 695 011.
  2. RANI KOSHY, D/O.LILLY KOSHY, AGED 56,  
T.C.NO.30/83/1, ANAYARA (P.O), THIRUVANANTHAPURAM.  
PRESENTED EMPLOYED AT P.O.BOX NO.41, ABU DHABI, U.A.E.

BY ADV. SRI.R.S.KALKURA

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON  
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**A.HARIPRASAD, J.**

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**R.S.A. No.245 of 2011**  
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**Dated this the 25<sup>th</sup> day of June, 2015**

**JUDGMENT**

Appellant is the defendant in a suit for partition. He is brother of the plaintiffs. The plaintiffs contended that the suit property devolved on the plaintiffs and the defendant as per a Will executed by their mother Lilly Koshy @ Veronica Koshy. Their mother expired on 07.04.1999 and thereafter, the Will came into effect. Plaintiff schedule property is lying as a compact plot without demarcating the share of the plaintiffs and the defendant. The parties are in joint possession of the property. In spite of repeated requests the defendant was not prepared to effect a partition. Hence the suit. The defendant (appellant) contended that the suit is not maintainable. Plaintiffs have no partible right over the property. The entire property belongs to Ezabel D. Netto, D/o.George D.Netto and Veronica D.Netto. Ezabel D. Netto was Assistant Surgeon in the Municipal Hospital, Thirunelveli. Grand father of the parties to the suit was brother of Ezabel D. Netto. She executed a Will distributing properties to various persons. Grand father of the parties to the suit also got 1/5<sup>th</sup> share over the entire property. Thereafter, by other dispositions of property, it devolved on the defendant and his mother. Therefore, the plaintiffs cannot claim any right

over the entire property.

2. Heard the learned counsel for the appellant and the respondents.

3. The courts below negated the contentions raised by the appellant mainly for the reason that the plea raised in the written statement was not established by adducing reliable evidence. Even though the defendant contended that the plaintiffs' claim was barred by res judicata by virtue of the decree in O.S.No.1391 of 1979 before the Munsiff's Court having jurisdiction over the area, the trial court as well as the lower appellate court found that none of the relevant documents was produced to establish the claim of res judicata. It is specifically found that neither the plaint nor written statement was produced to contend that the plaint claim is barred by res judicata. Another plea of res judicata raised by the defendant on the basis of O.S.No.78 of 1954 also was not established. Hence the plea of res judicata had gone unestablished. There is no dispute regarding the execution of a Will by their mother, viz., Lilly Koshy. In the absence of any reliable evidence to substantiate the plea of non-partibility and in the absence of any challenge to the Will propounded by the plaintiffs, the trial court rightly decreed the suit.

After hearing the learned counsel on both sides and on

perusal of records, I do not find any substantial question of law in this appeal. Hence the appeal is dismissed. There is no order as to costs.

All the pending interlocutory applications will stand dismissed.

**A. HARIPRASAD, JUDGE.**

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