

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. 254 of 2013 ()

AGAINST THE JUDGMENT AND DECREE IN AS NO.16/2003 of SUB
COURT, NEYYATTINKARA DATED 12-01-2010

AGAINST THE JUDGMENT AND DECREE IN OS 863/2000 of I ADDITIONAL MUNSIF
COURT, NEYYATTINKARA DATED 28-08-2002

APPELLANT(S)/ APPELLANTS/ DEFENDANTS 2 AND 3:

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1. SATHYANESAN, AGED 78 YEARS,
S/O MANUVEL NADAR, S.V. NIVAS, KADAVATTARAM DESOM
NEYYATTINKARA VILLAGE
 - (*) 2. PRASAD,
S/O SATHIYANESAN, AGED 41 YEARS, S.V. NIVAS,
KADAVATTARAM DESOM
NEYYATTINKARA VILLAGE (TRANSPosed AS ADDL.R3)

A1- BY ADVS.SRI.G.S.REGHUNATH
SRI.K.RAJESH KANNAN
SRI.A.S.SHAMMY RAJ
SRI.P.SHANES

RESPONDENT(S)/RESPONDENTS/ PLAINTIFF AND IST DEFENDANT:

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1. CHELLAMMA, AGED 83 YEARS
D/O APPIPENNU, JAIVILLA, NELLIKKAKUZHI
KANJIRAMKULAM DEOSM, KANJIRAMKULAM VILLAGE
TRIVANDRUM- 695126
 2. YESUDASAN, AGED 80 YEARS,
S/O MANUVEL NADAR, CHITTAKKODE, KAIVANVILAKAM BUNGLOW
KADAVATTARAM DESOM
NEYYATTINKARA VILLAGE, TRIVANDRUM- 695121

APPELLANT NO.2 IS TRANSPosed AS ADDL.R3:

ADDL.R3. PRASAD,
S/O SATHIYANESAN, AGED 41 YEARS, S.V. NIVAS,
KADAVATTARAM DESOM
NEYYATTINKARA VILLAGE.

(*) APPELLANT NO.2 IS TRANSPosed AS ADDL.RESPONDENT 3 AS PER ORDER DATED
11/2/15 IN IA NO.352/2015

R1 BY ADV.SRI.V.SURESH
R1 BY ADV.SRI.G.SUDHEER
R2 BY ADV.SRI.N.RATHEESH
R2 BY ADV.SMT.SUMA RATHEESH
ADDL.R3 BY ADV.SRI.R.GOPAN

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

A.HARIPRASAD, J.

R.S.A. No.254 of 2013

Dated this the 25th day of June, 2015

JUDGMENT

Heard the learned counsel for the first appellant.

2. When the matter came up on the previous posting dates, it was submitted by the counsel appearing for the first appellant/second defendant and the plaintiff and also the first defendant that the matter has been settled between the parties and they have arrived at a compromise. The compromise was executed as the matter was settled in a mediation before the Kerala Mediation Centre. The Mediator has submitted a report. Duly executed compromise is also produced. But, it is to be noted that the additional third respondent has not signed the compromise. Learned counsel on both sides submit that the additional third respondent was the original second appellant who was later transposed as a respondent. The additional third respondent is son of the first appellant. There is a gift deed executed by the first appellant in favour of the additional third respondent while the property was remaining in co-ownership. But for the gift, the additional third respondent has no right over the property. Therefore, the gift deed will take effect only in respect of the property allotted to the first appellant (second defendant) in the partition. It is submitted that the

parties have agreed in the compromise that the property covered by the gift deed in favour of the additional third respondent has been set apart to the share of the first appellant. In that way the gift deed has been effectuated by the parties. The parties have agreed that the right of the additional third respondent will not be disturbed in any manner. It is also submitted that the additional third respondent is laid up due to severe injuries sustained in an accident and not in a position to appear before the court or before the Mediation Centre and so he is unable to sign on the compromise. Therefore, considering the entire facts and circumstances, I dispose of the appeal declaring that the parties are entitled to shares as shown in the compromise. The compromise executed by all the parties except the additional third respondent/third defendant and the plan appended thereto will form part of the decree.

Appeal is disposed of accordingly.

All pending interlocutory applications will stand closed.

A. HARIPRASAD, JUDGE.

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