

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V. ASHA

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

RFA.No. 641 of 2014 ()

AGAINST THE ORDER/JUDGMENT AND DECREE IN OS 590/2011 of I ADDL. SUB
COURT, ERNAKULAM DATED 25.6.2014

APPELLANT(S)/PLAINTIFFS::

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1. SUNIL VARGHESE AGED 51 YEARS
S/O. P.O. VARGHESE, PUNNAMATTATHIL HOUSE
VALAKAM VILLAGE, RAKKAD KARA, MEKKADAMPU P.O.
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT.
 2. THANKA SUNIL @ THANKAMMA,
W/O. SUNIL VARGHESE, PUNNAMATTATHIL HOUSE
VALAKAM VILLAGE, RAKKAD KARA, MEKKADAMPU P.O.
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI. G. SREEKUMAR (CHELUR)

RESPONDENT(S)/DEFENDANT:

ANIL VARGHESE
ABBAS, S/O. P.O. VARGHESE, PUNNAMATTATHIL HOUSE
VALAKAM VILLAGE, RAKKAD KARA, MEKKADAMPU P.O.
MUVATTUPUZHA TALUK, ERNAKULAM DISTRICT
NOW RESIDING AT EDAMPADATH HOUSE, PYNGARAPALLY P.O.
THURUTHIKARA, MULAMTHURUTHY, KANAYANNUR TALUK
ERNAKULAM 680 001.

R1 BY ADV. SRI. VARGHESE PARAMBIL
R1 BY ADV. SRI. ALBERT JOSEPH
R1 BY ADV. SRI. U. RAMACHANDRAN
R1 BY ADV. SRI. K. S. SUNEER
R1 BY ADV. SMT. MONCY JACOB

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

R.F.A.No.641 of 2014

Dated this the 22nd day of September, 2015

JUDGMENT

Antony Dominic, J.

1.Plaintiffs in O.S.590/11 on the file of the Sub Court, Ernakulam are the appellants. The suit was for partition of 8 cents of land in R.S.874/3 of Poonithura village. By the judgment and decree under appeal, the property was held to be not partible and the suit was dismissed. It is challenging the judgment and decree, this appeal is filed.

2.We heard learned counsel for the appellants and the learned counsel for the respondent.

3.Having heard the counsel for the parties, we are satisfied that the appellants have not made out a case for interference with the judgment and decree under appeal. Appellants filed the suit contending that the 8 cents of property mentioned above, which stood in the name of their mother Mary as per Ext.B2 sale deed, was acquired in her name by her husband and the father of the appellants and the respondent, late Sri.Varghese. It was their case that the facts

being as above, the property was partible and that Mary had illegally executed Ext.A1 sale deed in favour of the respondent/defendant. With the above averments, they sought for partition of the property.

4.However, in the court below, Ext.A1 sale deed executed by Mary in favour of the respondent/defendant was not challenged and no evidence whatsoever had been adduced by the appellants to the effect that the property was acquired by late Sri.Varghese in the name of Mary as per Ext.B2. Added to this is the fact that there is no other satisfactory evidence to sustain the plaint claim. In such circumstances, having regard to Exts.A1 and B2 and the evidence adduced, the court below is fully justified in concluding that the property is not partible and dismissing the suit.

We do not see any reason to interfere with the judgment under appeal. Appeal is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

k kb.

/True copy/