

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

RSA.No. 627 of 2013

**AS 164/2011 OF ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA
DATED 08-11-2012
OS 80/2008 OF SUB COURT, VADAKARA DATED 22-07-2011**

APPELLANT(S)/APPELLANTWS/PLAINTIFFS 1 AND 3 TO 6:

- 1. THARAMMAL KADEESA, AGED 64 YEARS,
D/O.ANDRUMAN, HOUSE WIFE RESIDING AT KAVOOR
NARIPATTA AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT.**
- 2. ABDUL LATHEEF, AGED 48 YEARS,
S/O.PATU, AGRICULTURIST, RESIDING AT PUTTOL
AYANCHERY AMSOM DESOM, THAROPOYIL POST, VATAKARA TALUK
KOZHIKODE DISTRICT.**
- 3. BROTHER MUHAMMED, AGED 38 YEARS,
AGRICULTURIST, RESIDING AT PUTTOL
AYANCHERY AMSOM DESOM, THAROPOYIL POST, VATAKARA TALUK
KOZHIKODE DISTRICT.**
- 4. SISTER KUNHAMI, AGED 36 YEARS,
HOUSE WIFE, RESIDING AT PUTTOL, AYANCHERY AMSOM DESOM,
THAROPOYIL POST, VATAKARA TALUK, KOZHIKODE DISTRICT.**
- 5. SISTER REHMATH, AGED 34 YEARS,
HOUSE WIFE, RESIDING AT PUTTOL, AYANCHERY AMSOM DESOM
THAROPOYIL POST, VATAKARA TALUK, KOZHIKODE DISTRICT.**

**BY ADVS.SRI.SAJU.S.A
SMT.MEENA.A.
SRI.JAMSHEED HAFIZ
SRI.K.C.KIRAN**

PJ

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RSA.No. 627 of 2013

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

1. BIYATHU, AGED 76 YEARS,
D/O.ANDRUMAN, HOUSE WIFE, RESIDING AT KARIATT
AYANCHERY AMSOM DESOM, THAROPOYIL POST, VATAKARA TALUK
KOZHIKODE DISTRICT.
2. KUNHAMMED, AGED 69 YEARS,
S/O.ANDRUMAN, TRADER, RESIDING AT THARAMAL
AYANCHERY AMSOM DESOM, THAROPOYIL POST, VATAKARA TALUK
KOZHIKODE DISTRICT.
- * 3. KUNHAMMAD, AGED 69 YEARS, (NAME AND ADDRESS CORRECTED)
S/O.ANDRUMAN, TRADER, RESIDING AT THARAMAL
AYANCHERY AMSOM DESOM, THAROPOYIL POST, VATAKARA TALUK
KOZHIKODE DISTRICT.

KUNHAVULLA, S/O.ANDRUMAN, AGED 63 YEARS, RESIDING AT THARAMAL
AYANCHERY AMSOM DESOM, THAROPOYIL POST, VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN-673541.
AS PER ORDER DATED 29/1/15 IN IA.173/15
4. BROTHER MOIDU, AGED 56 YEARS,
TRADER, RESIDING AT THARAMAL
AYANCHERY AMSOM DESOM, THAROPOYIL POST, VATAKARA TALUK
KOZHIKODE DISTRICT-673541.
5. KUTTIYIL ABDURAHIMAN, S/O.MOIDEEN, AGED 59 YEARS,
TRADER, RESIDING AT KOLATHAYITHAZHEKUNIYIL
KOTTAPPALLY AMSOM, PYNGOTTAYI DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT-673541.

R1-R5 BY ADVS. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

P.B.SURESH KUMAR, J.

R.S.A.No.627 of 2013

Dated this the 19th day of June, 2015

JUDGMENT

The plaintiffs in a suit for partition are the appellants.

2. The plaint schedule property belonged to Andruman, the father of plaintiffs and defendants 2 to 4. First defendant was the wife of Andruman who died pending suit. The case of the plaintiffs is that they are entitled to 2/9th share in the plaint schedule property. Defendants 2 to 4 contested the suit contending, among others, that on the death of Andruman the plaint schedule property was partitioned orally among his legal representatives; that the plaint schedule property was allotted to defendants 2 to 4 as per terms of the said oral partition and that the plaintiffs have no right in the plaint schedule property. They have also contended that pursuant to the said oral partition, the plaint schedule property was sold by them to the fifth defendant.

3. Despite the contentions aforesaid, both sides have not adduced any oral evidence. The defendants, however, produced five documents which were marked as Exts.B1 to B5. The trial

court accepted the case of oral partition set up by defendants 2 to 4 and dismissed the suit. The plaintiffs took up the matter in appeal before the lower appellate court and the lower appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The plaintiffs are aggrieved by the concurrent decisions of the courts below and hence this second appeal.

4. Heard the learned Senior Counsel for the appellants and the learned Counsel for the defendants 2 to 5.

5. Among the documents produced by the defendants, Ext.B1 is an affidavit filed by the plaintiffs in a proceedings before the Land Tribunal, Kozhikode and Ext.B2 is an agreement entered into between the legal representatives of the deceased Andruman. It is seen that as per Ext.B2 agreement, the properties held jointly by the legal representatives of Andruman were partitioned among themselves and the sharers started possessing the properties separately. Item No.19 in Ext.B2 is the plaint schedule property. It is also seen from Ext.B2 that the plaint schedule property is a property held by defendants 2 to 4. Ext.B1 affidavit indicates the plaintiffs have stated before the Land Tribunal, Kozhikode that the properties held by Andruman

were partitioned among his legal representatives on his death. A copy of Ext.B2 agreement is also seen produced before the Land Tribunal in the said proceedings. It is on the basis of the said documents, the courts below came to the conclusion that the properties held by the parties on the death of Andruman were orally partitioned among them and therefore the plaintiffs are estopped from taking a stand contrary to the terms of Ext.B2 agreement.

6. The learned Senior Counsel for the appellants contended that Ext.B2 is only an agreement to partition the properties and a document to effect partition by metes and bounds, has not been executed among the parties and therefore the decisions rendered by the courts below on the basis of Ext.B2 agreement are unsustainable.

7. The fact that Ext.B2 agreement was executed among the sharers is not in dispute. The fact that the plaintiffs have filed Ext.B1 affidavit before the Land Tribunal stating that the property held by the parties jointly on the death of Andruman have been partitioned among them is also not in dispute. True, a partition deed evidencing partition of the properties was not executed among the sharers. Even the contention of defendants 2 to 4 is

only that there was an oral partition among the sharers. Ext.B2 agreement is relied on by the defendants only to establish the case of oral partition set up by them. It is settled that there can be a family arrangement among the members of a family descending from a common ancestor to settle and resolve their conflicting claims or disputed titles to properties. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made. The object of the family arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity of the family. It is also settled that family arrangement can be oral in which case no registration is necessary. Registration will be necessary only if terms of the family arrangement are reduced into writing. Even in a case where the terms of family arrangement are reduced to writing, a distinction is liable to be drawn between the document containing the terms and recitals of the family arrangement and a mere memorandum prepared after the family arrangement had already been made either for the purpose of record or for making mutation. The memorandum prepared after the family arrangement had been made does not require registration as the same does not create or extinguish any rights in the immovable

properties [See **Kale v. Deputy Director of Consolidation** (1976) 3 SCC 119] and **Ms. Kavitha Goud vs. Nookala Sudarshan Reddy** (AIR 2004 Andhra Pradesh 326)].

8. The learned Senior Counsel for the appellants contended that Ext.B2 cannot be treated as a memorandum of family arrangement as it contemplates a further document to be executed. A perusal of Ext.B2 indicates that on the death of the original owner Andruman, his legal representatives have decided to separate the joint ownership and possession of the various properties owned by him and the properties are accordingly held separately by the sharers. Ext.B2, in the circumstances, can be construed as a memorandum prepared after the family arrangement has been made. As pointed out earlier, though the execution of Ext.B2 document is admitted by the plaintiffs, there is no pleading in the plaint that the said document is not executed or that the same is vitiated on any ground whatsoever. It is also seen that the parties to the family arrangement had acted upon the same. The plaintiffs themselves have filed Ext.B1 affidavit before the Land Tribunal stating that the properties held jointly by the legal representatives of Andruman have been divided among themselves as per Ext.B2 arrangement. It is also seen that the

plaintiffs are given their share as per the terms of Ext.B1. In the said circumstances, the plaintiffs who were benefitted by the family arrangement are not entitled to claim partition of the properties allotted to others. The parties to the family arrangement who are benefitted by the transaction are precluded from assailing the same or any part thereof. [See **Kale and others vs. Deputy Director of Consolidation** (supra)].

For the reasons stated above, I do not find any merit in this Second Appeal and the same is, accordingly, dismissed *in limine*. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm