

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

RSA.No. 662 of 2013

**JUDGMENT DATED 29-11-2012 IN AS 197/2011 OF ADDITIONAL DISTRICT COURT-II,
MAVELIKKARA**

JUDGMENT DATED 12-10-2011 IN OS 384/2009 OF MUNSIFF COURT, MAVELIKKARA

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APPELLANT(S)/APPELLANTS/DEFENDANTS:

- 1. SUJATHA MADHAVANKUTTY, AGED 58 YEARS,
W/O MADHAVANKUTTY, REVATHY, CHUNAKKARA NADUVILMURI,
CHUNAKKARA VILLAGE, NOW RESIDING AT FLAT NO.C 412,
PLOT NO.A-3, SECTOR-23, NERUL,
NAVI MUMBAI, MAHARASHTRA STATE.**
- 2. AJITH MADHAVANKUTTY, AGED 33 YEARS,
S/O MADHAVANKUTTY, OF -DO-DO-**

**BY ADVS.SRI.C.R.VIJAYAKUMARAN PILLAI
SRI.R.SANTHOSH (VARKALA)
SRI.HARISH GOPINATH
SMT.S.V.HARITHA
SRI.AUM MANGALASSERRY**

RESPONDENT/RESPONDENT/PLAINTIFF:

**SURESH MADHAVANKUTTY, AGED 35,
S/O MADHAVANKUTTY, PADMAVILASOM (REVATHY),
CHUNAKKARA NADUVILAKKARAMURI, CHUNAKKARA VILLAGE,
NOW WORKING AT OMASCO HONDA, PB NO.2734, PC-1132,
RUWI, SULTANATE OF OMAN,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER,
N.SAHADDEVAN, AGED 65 YEARS, S/O NARAYANAN,
THAYYIL VEEDU, KOIPALLY, KARAZHAMA MURI,
PERINGALA VILLAGE.**

BY ADV. SRI.K.SHAJ

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

R.S.A.No.662 of 2013

Dated this the 25th day of November, 2015

JUDGMENT

Defendants 1 and 2 in a suit for partition are the appellants.

2. The first defendant is the mother and the second defendant is the brother of the plaintiff. There are four items of properties in the suit. The plaint A and B schedule properties belonged to the father of the plaintiff and the plaint C and D schedule properties belonged to both the father and mother of the plaintiff. The plaintiff, therefore, claimed 1/3rd share over the plaint A and B schedule properties and 1/6th share over the plaint C and D schedule properties. The contention of the defendants was

that the plaintiff had released his rights over the suit properties in favour of defendants 1 and 2. The trial court rejected the contention of the defendants and decreed the suit. Though the matter was taken up in appeal by defendants 1 and 2, the appellate court, on a reappraisal of the evidence, confirmed the decision of the trial court. Defendants 1 and 2, who are aggrieved by the concurrent decisions against them, have thus come up in the second appeal.

3. Heard the learned counsel for the appellants.

4. The main contention raised by the learned counsel for the appellants is that the defendants were not given an effective opportunity to contest the suit. The learned counsel also contended that the plaintiff has executed an affidavit releasing his rights over the suit property in favour of defendants 1 and 2 and the same was though produced before the appellate court, the appellate

court did not consider the same.

5. The properties sought to be partitioned are immovable properties. Admittedly, the plaintiff has 1/3rd share over the plaint A and B schedule properties and 1/6th share over the plaint C and D schedule properties. As noticed above, the case of the defendants is that the plaintiff had released his rights over the suit properties in favour of defendants 1 and 2. The release of rights in respect of the immovable properties can be made only by registered instruments. The defendants have no case that any registered instrument has been executed in respect of the suit properties by the plaintiff in favour of defendants 1 and 2. In the said view of the matter, the conclusions arrived at by the courts below are perfectly in order. There is no substantial question of law, much less any substantial question of law, involved in the second appeal. The second appeal, in the circumstances, is devoid of merits and the

same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm