

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW**

**THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937**

**RSA.No. 127 of 2015 ()**  
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**AGAINST THE ORDER/JUDGMENT IN AS 18/2012 OF ADDITIONAL DISTRICT  
JUDGE-III, THIRUVANANTHAPURAM**  
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**AGAINST THE ORDER/JUDGMENT IN OS 1457/2008 OF PRINCIPAL MUNSIF  
COURT, THIRUVANANTHAPURAM**  
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**APPELLANT(S)/APPELLANT/1ST DEFENDANT:**  
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**LATHA DEVI  
D/O.PARUKUTTY AMMA, OLD T.C. 50/1275, NEW T.C. 50/444  
NEDUMTHARA VEEDU, KALADY, MANACAUD  
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.G.P.SHINOD  
SRI.RAM MOHAN.G.  
SRI.MANU V.**

**RESPONDENT(S)/RESPONDENTS/PLAINTIFFS & DEFENDANTS 2 TO 4:**  
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- 1. MALATHY AMMA, AGED 73 YEARS  
D/O.PARUKUTTY AMMA, LALITHA SREE, T.C. 50/769 (1)  
MARUTHOORKADAVU, KALADY, MANACAUD  
THIRUVANANTHAPURAM.**
- 2. RUGMINI AMMA, AGED 67 YEARS  
D/O.PARUKUTTY AMMA, H/417, GOWRI MANDIRAM  
KULAMTHERI ROAD, VELLAYANI, NEMON  
THIRUVANANTHAPURAM - 695 018.**
- 3. USHA MURALEEDHARAN, AGED 36 YEARS  
D/O.MALATHY AMMA, T.C. 50/515 (7), LALITHA SREE  
KALADY, MANACAUD, THIRUVANANTHAPURAM  
PIN - 695 009.**
- 4. UNNIKRISHNAN NAIR, AGED 62 YEARS  
S/O.PARAMESWARAN PILLAI, T.C. 50/468 (1) DEVATHOTTAM  
KALADY, MANACAUD, THIRUVANANTHAPURAM  
PIN - 695 002.**
- 5. LALITHA, AGED 46 YEARS  
D/O.PARUKUTTY AMMA, T.C. 50/444, NEDUMTHARA VEEDU  
KALADY, MANACAUD, THIRUVANANTHAPURAM. PIN - 695 009.**

**RSA.No. 127 of 2015 ()**

**6. DIJU PRASAD, AGED 28 YEARS  
S/O.RUGMINI AMMA, GOURI MANDIRAM, HOUSE NO. 417  
KULAMTHERI ROAD, VELLAYANI, NEMOM  
THIRUVANANTHAPURAM, PIN - 695 018.**

**R4 & 5 BY ADV. SRI.B.KRISHNA MANI**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON  
12-11-2015, ALONG WITH RSA. 128/2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**R.AV**

**K. ABRAHAM MATHEW, J.**

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**R.S.A.Nos.127 of 2015 and 128 of 2015**  
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**Dated this the 12<sup>th</sup> day of November, 2015**

**J U D G M E N T**  
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These two appeals arise from AS.17 of 2012 and AS 18 of 2012 of Additional District Judge-II, Thiruvananthapuram, which in turn arose from OS.1368 of 2008 and 1457 of 2008 of Principal Munsiff Court, Thiruvananthapuram. The parties to the suit except the third plaintiff and fourth defendant in OS.1457 of 2008 are children of one Parukutty Amma. The plaint schedule property in OS.1457 of 2008 was allotted to Parukutty Amma and her children in a suit for partition. OS.1457 of 2008 is for partition and OS.1368 of 2008 filed by the appellant is for injunction in respect of a part of the plaint schedule property in OS.1457 of 2008. Her case is that there was an oral partition and the plaint schedule property in O.S.1368 of 2008 was allotted to her in the oral partition and she is in its exclusive possession and the defendants in that suit attempted to trespass into the property. The trial court found that there is no evidence to

support the claim of oral partition and accordingly in the appellant's suit, O.S.1368/2008 was dismissed and in OS.1457 of 2008 a preliminary decree for partition was passed. There was another prayer in O.S.1457 of 2008 there was a counter claim which also was dismissed. The decrees were challenged in AS 17 and 18 of 2008 of Additional District Judge-III, Thiruvananthapuram. The learned District Judge confirmed the decrees and dismissed the appeals. These are challenged in these second appeals.

2. Heard.

3. Both the courts below have concurrently found that no evidence has been adduced by the appellant to prove her claim that there was an oral partition. Whether there was an oral partition is a question of fact. There is no evidence to prove the oral partition pleaded by the appellant. Both the courts below have come to the right conclusion that the oral partition pleaded by the appellant has not been proved. The consequence is that the property in OS.1457 of 2008 is liable to be partitioned. In other words, the prayer for injunction in the other suit cannot

be granted. The courts below have rightly dismissed O.S.1368/2008 and decreed O.S.1457 of 2008. No question of law arises in these appeals.

In the result, these appeals are dismissed.

sd/-  
**K. ABRAHAM MATHEW**  
**JUDGE**

R.AV

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PA to Judge