

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

RSA.No. 347 of 2015 ()

**AGAINST THE JUDGMENT IN AS 1/2011 of 1st ADDITIONAL DISTRICT COURT,
KALPETTA DATED 31-10-2014.**

**AGAINST THE JUDGMENT AND DECREE IN OS 116/2003 of SUBORDINATE COURT,
SULTHAN BATHERY DATED 23-12-2010.**

APPELLANT(S)/APPELLANTS IN A.S/ PLAINTIFFS I TO 3 IN O.S :

- 1. SAVITHRI NETHIAR, AGED 67 YEARS,
W/O RAGHAVAN NAMBIAR, SHEEJALAYAM HOUSE,
KAMMANA POST, NALLURNAD AMSOM,
KAMMANA DESOM, MANANTHAVADI TALUK,
WAYANAD DISTRICT.**
- 2. RUGMINI NETHIAR, W/O GOPALAN NAMBIAR,
AGED 65 YEARS, MANHOTH KIZHAKKE VEEDU,
KAMMANA POST, NALLURNAD AMSOM,
KAMMANA DESOM, MANANTHAVADI TALUK,
WAYANAD DISTRICT.**
- 3. LAKSHMI NETHIAR, W/O SREEDHARAN NAMBIAR,
AGED 60 YEARS, HOUSE WIFE, MANHOTH HOUSE,
NALLURNAD AMSOM, KAMMANA DESOM, KAMMANA POST,
MANANTHAVADI TALUK, WAYANAD DISTRICT.**

BY ADV. SRI.A.V.JAMES.

RESPONDENT(S)/APPELLANTS IN A.S/ PLAINTIFFS IN O.S :

**M.T. ANANDAN NAIR, S/O KRISHNAN NAMBIAR,
AGED 83 YEARS, RADHAMANDIRAM HOUSE,
MANAGER, KAMMANA NAVODAYAM L.P SCHOOL,
KAMMANA POST, NALLURNAD AMSOM,
KAMMANA DESOM, MANANTHAVADI TALUK,
WAYANAD DISTRICT - 670 645.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.347 of 2015

Dated this the 6th day of April, 2015.

J U D G M E N T

Challenge in this appeal is against the concurrent findings of facts by the courts below that the will propounded by the appellants was not proved as required under the provisions of the Evidence Act.

2. Heard the learned counsel for the appellants. I have carefully perused the records.

3. The appellants are the plaintiffs in the trial court. They filed a suit for recovery of possession of a property based on Ext.A2 will. Learned counsel for the appellants submitted that as the original will could not be traced out, the plaintiffs produced a certified copy of the will executed by father in their favour and it is marked as Ext.A2. As the executing witnesses were no more at the time when the evidence was let in, it was sought to be proved through other evidence. The courts below

based on valid reasoning concurrently found that the will was not proved. The foundation of the plaintiffs' case was found to be shaky and hence dismissed the suit. Learned counsel for the appellants submitted that the appellants should have been given an opportunity to establish their case by cause production of the relevant documents from the Registrar's office and also by adducing evidence. I am afraid, I am not able to accept this contention at this stage. No substantial question of law could be brought out to maintain this regular second appeal. However, it is made clear that even if Ext.A2 will was not proved, the plaintiffs may claim right on account of the fact that they are the legal heirs of deceased Nambru @ Moopil Nambiar and therefore they have every right to seek remedy against the defendant, if it is sought within the period of limitation. Therefore, I find that the regular second appeal is devoid of any merit and it is dismissed without prejudice to the legal rights

available to the appellants in appropriate proceedings.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

amk

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P.A to Judge