

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

RSA.No. 511 of 2015 C

JUDGMENT DATED 28-10-2014 IN AS 325/2009 OF ADDITIONAL DISTRICT COURT-I,
PALAKKAD
ORDER DATED 29-06-2009 IN IA.3155/2005 IN OS 403/1998 OF PRINCIPAL SUB COURT,
PALAKKAD

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APPELLANT(S)/APPELLANTS/RESPONDENTS 1 TO 3, 5 & 6/DEFENDANT:

1. RUGMINI, W/O.LATE RAMAN,
RESIDING AT PALLIKANDATH HOUSE, KADUMTHURITHI,
KINASSERY AMSOM, KINASSERY DESOM,
PALAKKAD TALUK & DISTRICT.
2. KANAKAM, D/O.LATE RAMAN,
RESIDING AT PALLIKANDATH HOUSE, KADUMTHURITHI,
KINASSERY AMSOM, KINASSERY DESOM,
PALAKKAD TALUK & DISTRICT.
3. NIRMALA, D/O.LATE RAMAN,
RESIDING AT PALLIKANDATH HOUSE, KADUMTHURITHI,
KINASSERY AMSOM, KINASSERY DESOM,
PALAKKAD TALUK & DISTRICT.
4. LAKSHMANAN, S/O. LATE RAMAN,
RESIDING AT PALLIKANDATH HOUSE, KADUMTHURITHI,
KINASSERY AMSOM, KINASSERY DESOM,
PALAKKAD TALUK & DISTRICT.
5. SEETHALAKSHMI, D/O. LATE RAMAN,
RESIDING AT PALLIKANDATH HOUSE, KADUMTHURITHI,
KINASSERY AMSOM, KINASSERY DESOM,
PALAKKAD TALUK & DISTRICT.

BY ADVS. SRI.BINOY VASUDEVAN
SRI.R.MANIKANTAN
SMT.BABITHA P.G.

RESPONDENT(S)/RESPONDENTS/PETITIONERS/PLAINTIFFS:

1. CHEMBAKAVALLY, W/O.LATE SIVADAS,
AGED 52 YEARS, RESIDING AT THANNIKKOTTIL,
KAKKAYOOR AMSOM, CHITTUR TALUK - 678 512.

msv/

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2. SHIJI, D/O.LATE SIVADAS,
AGED 24 YEARS, RESIDING AT THANNIKKOTTIL,
KAKKAYOOR AMSOM, CHITTUR TALUK - 678 512.
3. SHIBIN DAS, S/O.LATE SIVADAS,
AGED 22 YEARS, RESIDING AT THANNIKKOTTIL,
KAKKAYOOR AMSOM, CHITTUR TALUK - 678 512.
4. BHARATAN, S/O. LATE RAMAN,
AGED 53 YEARS, ("MENTALLY ILL"), KADUNTHURUTHI,
KINASSERY AMSOM, PALAKKAD TALUK,
REPRESENTED BY GUARDIAN/WIFE INDIRA, W/O.BHARATHAN,
AGED 44 YEARS, RESIDING AT PALLIKANDATH VEEDU,
KADUMTHURUTHI, KINASSERY AMSOM,
PALAKKAD TALUK - 678 701.

R1-R3 BY ADVS. SRI.SAJAN VARGHEESE K.

SRI.LIJU. M.P

R4 BY ADV. SRI.VINOD KUMAR C.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

R.S.A.No.511 of 2015

Dated this the 15th day of September, 2015

JUDGMENT

Defendants 1 to 3, 5 and 6 in a suit for partition are challenging in the second appeal the final decree passed in the suit.

2. Respondents are the plaintiffs in the suit. The suit was filed in the year 1998 seeking partition of their 3/4th share in plaint schedule item Nos.1 to 4 properties and 21/196 share in plaint schedule item No.5 property. The suit was decreed ex parte. Later, the plaintiffs filed I.A.No.3155 of 2005 seeking a final decree in the suit. In the final decree proceedings, an Advocate Commissioner was appointed to effect partition and the Advocate Commissioner

appointed has filed Ext.CI report, CI (a) and C1(b) plans and Ext.C1 (c) schedule. The trial court accepted the report, plans and schedule submitted by the Advocate Commissioner and passed a final decree in accordance with the same. The appellants challenged the final decree before the lower appellate court on the ground that the partition effected by the Advocate Commissioner was inequitable. The appellate court rejected the contention raised by the appellants and confirmed the final decree. The appellants are aggrieved by the said decisions of the courts below.

3. Heard the learned counsel for the appellants.

4. The appellants are attacking the final decree passed in the suit on the ground that the allotment of shares made by the Advocate Commissioner is inequitable. The appellants have not filed any objections to the report of the Advocate Commissioner who effected the partition in the final decree proceedings. Having not objected to the report, plans and schedule filed by Advocate Commissioner who effected

partition in the final decree proceedings, the appellants are not entitled to challenge the final decree in this second appeal filed under Section 100 of the Code of Civil Procedure.

The second appeal 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