

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

RSA.No. 59 of 2014 ()

AGAINST THE JUDGMENT AND DECREE IN AS NO.164/2010 of ADDITIONAL DISTRICT
COURT (SPECIAL), KOTTAYAM DATED 15-07-2013

AGAINST THE JUDGMENT AND DECREE IN OS NO.37/2009 of MUNSIF COURT, VAIKOM
DATED 30-01-2010

APPELLANT(S)/2ND RESPONDENT/2ND DEFENDANT:

RAMADEVI, 43 YEARS
W/O.VENUGOPALAN, PUTHENPURAYIL HOUSE
VADAYAR VADAKKUMBHAGOM KARA, VADAYAR VILLAGE
VAIKOM TALUK

BY ADV. SRI.MATHEW PHILIP

RESPONDENT(S)/APPELLANT/PLAINTIFF/RESPONDENT/1ST RESPONDENT/FIRST
DEFENDANT:

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1. PRABHAKARAN, 51 YEARS, S/O.VAVA,POOVALLIYIL HOUSE,
THALAYOLAPARAMPU KARA,VADAYAR VILLAGE,
VAIKOM TALUK KOTTAYAM -686 605.
 2. THANKACHAN,47 YEARS, S/O.KUNJUNNI,ERICKATHARAYIL
HOUSE,THALAYOLAPARAMPU KARA,VADAYAR VILLAGE,
VAIKOM TALUK,KOTTAYAM- 686 605.

R1 BY ADV.SRI.G.SREEKUMAR (CHELUR)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.59 of 2014

Dated this the 28th day of July, 2015

JUDGMENT

Second appeal by the second defendant in a suit for partition ventilating a grievance that the lower appellate court unjustifiably reversed the finding of the trial court. According to the learned counsel for the appellant, the reversal of the decree of the trial court at the hands of the lower appellate court is legally incorrect.

2. Facts, in brief, are as follows: Plaint schedule property belongs to the plaintiff and the defendants in co-ownership. Plaintiff and each defendant have one third share over the plaint schedule property. Appellant/second defendant resisted the suit by contending that by virtue of the subsequent agreements executed between the parties (Exts.B1 to B4) the plaintiff has no right to claim partition.

3. The trial court after considering evidence on record found that Exts.A1 to A3, the documents on which the plaintiff relied on, are sham documents. It is pertinent to note that the suit is one for partition only. No counter claim or separate action was initiated at the instance of the appellant challenging the genuineness or binding nature of Exts.A1 to A3.

Still, such a view was taken by the court of first instance. Therefore, I am of clear view that the pronouncement made by the trial court that Exts.A1 to A3 are sham documents is without any legal foundation.

4. The lower appellate court found that Exts.B1 to B4, agreements in respect of sand mining, were not properly proved. Learned counsel for the appellant contended that the finding of the lower appellate court is incorrect insofar as the agreements are not disputed by the plaintiff. Even if it is assumed that those agreements are binding on the parties, in the light of Exts.A1 to A3 registered documents affecting the rights of the parties, Exts.B1 to B4 cannot have any legal effect on the rights of the plaintiff. If at all there is any violation of the terms in Exts.B1 to B4, the remedy of the appellant/second defendant is to file a suit for specific performance of the contract in a competent court. Since that was not done by the second defendant, she could not be heard to say that the property is not available for partition in the light of existence of Exts.A1 to A3. Therefore, the ultimate finding of the lower appellate court is correct, though there can be some dispute regarding the reasons mentioned by the court below in arriving at the finding. I do not find any substantial question of law arising in this appeal. It is made clear that the appellant/second defendant, if law permits, can approach a competent court for enforcing

Exts.B1 to B4 against the parties to this proceedings.

With these observations, the appeal is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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