

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

RSA.No. 686 of 2015

AS 94/2013 OF VI ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 23.8.2014
IA 2614/2009 IN OS.NO.394/1998 OF THE PRINCIPAL MUNSIF COURT, ERNAKULAM
DATED 30.3.2013
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APPELLANT(S)/APPELLANTS/RESPONDENTS 16 TO 18:

1. SREENI KUMAR,
AGED 38, S/O.KUNJUMON (LATE), ALUNKAL HOUSE,
CHITTEKODATH PARAMBIL, ELAMAKKARA, COCHIN-682 026.
2. PRASAD KUMAR,
AGED 35, S/O.KUNJUMON (LATE), ALUNKAL HOUSE,
CHITTEKODATH PARAMBIL, ELAMAKKARA, COCHIN-682 026.
3. PRAMOD KUMAR,
AGED 32, S/O.KUNJUMON (LATE), ALUNKAL HOUSE,
CHITTEKODATH PARAMBIL, ELAMAKKARA, COCHIN-682 026.

BY ADVS.SRI.K.V.JAYACHANDRAN
SRI.RAJU V.MATHEW

RESPONDENT(S)/RESPONDENT/PETITIONER & RESPONDENTS 1 TO 15, 19 & 20:

1. ASHALATHA @ MANKU,
AGED 55 YEARS, D/O.THAI,
RESIDING AT UZHUNNUKATTIL VEETIL, MANJUMMAL P.O.,
PIN 683 501, ERNAKULAM DISTRICT.
2. LEELA,
AGED 58 YEARS, W/O.SUKUMARAN,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.
3. SUNIL,
AGED 41 YEARS, S/O.SUKUMARAN,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.
4. SINDHU,
AGED 39 YEARS, D/O.SUKUMARAN,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.
5. SUNITHA,
AGED 37 YEARS, D/O.SUKUMARAN,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.

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6. MURALEEDHARAN,
AGED 49 YEARS, S/O.THAI, RESIDING AT ALUNKAL HOUSE,
VADUTHALA, COCHIN-682 023. (DIED)
7. RAMA,
AGED 44 YEARS, W/O.LATE BABU,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.
8. SHYNI,
AGED 25 YEARS, D/O.BABU, RESIDING AT ALUNKAL HOUSE,
VADUTHALA, COCHIN-682 023.
9. KANNAN,
AGED 42 YEARS, S/O.BABU, RESIDING AT ALUNKAL HOUSE,
VADUTHALA, COCHIN-682 023.
10. PADMINI,
W/O.LATE DAMODARAN, AGED 58 YEARS,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.
11. PREM KUMAR A.D.,
AGED 34 YEARS, S/O.DAMODARAN,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.
12. PRAVIN KUMAR A.D.,
S/O.DAMODARAN, AGED 32 YEARS,
RESIDING AT ALUNKAL HOUSE, VADUTHALA, COCHIN-682 023.
13. PAMMI MOLE A.D.,
AGED 30 YEARS, W/O.PRADEEP KUMAR, PARVATHI NIVAS,
ALUNKAL, VADUTHALA, COCHIN -682 023.
14. SUBHA, W/O.MURALEEDHARAN,
AGED ABOUT 45, RESIDING AT UZHUNNUKATTIL VEETIL,
MANJUMMAL P.O., PIN 683 501, ERNAKULAM DISTRICT.
15. GOVINDH, AGED ABOUT 9,
S/O.MURALEEDHARAN, UZHUNNUKATTIL VEETIL,
MANJUMMAL P.O, PIN 682 501, ERNAKULAM DISTRICT,
MINOR, REPRESENTED BY THE GUARDIAN AND THE MOTHER SUBHA.

R1-R5, R7-R15 BY ADV. SRI.PEEYUS A.KOTTAM

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.B.SURESH KUMAR, J.

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R.S.A.No.686 of 2015.

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Dated this the 4th day of December, 2015.

J U D G M E N T

The final decree in a suit for partition is under challenge in this second appeal.

2. The legal representatives of the second defendant are the appellants herein. As per the preliminary decree, the parties are entitled to 1/6th share each over the suit property. Pursuant to the preliminary decree, the plaintiff filed an application for passing of the final decree and the Advocate Commissioner appointed in the final decree proceedings divided the suit property as plots of 2.709 cents. Since there was a building in plot G, the same was auctioned among the sharers and the legal representatives of the fourth defendant obtained the same in auction. In the preliminary decree, there was a direction to the effect that as far as possible, the buildings

constructed by defendants 1 and 3 in the suit property shall be allotted to them. In the light of the said direction, the plots in which the buildings of the defendants 1 and 3 are situated have been allotted to them. The plots available for allotment between the plaintiff and the legal representatives of the second defendant were thus plots A and B. Both the plaintiff as also the legal representatives of the second defendant claimed plot B. The final decree court found that there is no special advantage for any plot and consequently allotted plot B to the plaintiff and plot A to the legal representatives of the second defendant. Aggrieved by the decision of the final decree court, the legal representatives of the second defendant preferred an appeal. The appellate court did not interfere with the discretion exercised by the trial court in the matter of allotting the aforesaid plots. Hence this second appeal by the legal representatives of the second defendant.

3. Heard the learned counsel for the legal representatives of the second defendant as also the learned

counsel for the plaintiff.

4. As noticed above, the short question that arises for consideration is as to whether the allotment of plot B to the plaintiff is justifiable. Both plots A and B are plots measuring 2.709 cents. The trial court found that there is no special advantage for any plot. Consequently, in its discretion, the trial court allotted plot B to the plaintiff and plot A to the legal representatives of the second defendant. The appellate court did not interfere with the decision taken by the trial court exercising its discretion. There is no substantial question of law involved in this matter for this Court to interfere with the aforesaid concurrent decisions of the courts below.

The second appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed.

**Sd/-
P.B.SURESH KUMAR,
JUDGE.**

Kvs/-

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PA TO JUDGE.