

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

RSA.No. 793 of 2015 ()

AS 261/2011 of II ADDL. DISTRICT COURT, KOLLAM
OS 258/2007 of MUNSIF COURT, KARUNAGAPPALLY

APPELLANTS/APPELLANTS/DEFENDANTS & ADDL.3RD DEFENDANT. :

1. ALIYAMMA @ AMMINI, AGED 54 YEARS,
W/O.GEORGE KUTTY, CHATHAMPALLIL VEEDU,
HOUSE NO.76, THODIYOOR MURI,
WARD NO.8 FROM CHATHAMPALLIL THEKKATHIL,
THODIYOOR MURI, THODIYOOR VILLAGE.
2. RAHELAMMA @ LEELAMMA, AGED 48 YEARS,
W/O.THANKACHAN, THEGARAYIL VEEDU, HOUSE NO.108
KARIKKAL MURI, WARD NO.17, PAZHAVARA VILLAGE,
KOTTARAKKARA TALUK FROM CHATHAMPALLIL THEKKATHIL
THODIYOOR MURI, THODIYOOR VILLAGE.
3. BENSYMOL, AGED 31 YEARS,
D/O.ELIYAMMA, CHATHAMPALLIL THEKKATHIL, HOUSE NO.85,
VENGARA MURI, WARD NO.8, THODIYOOR VILLAGE,
KARUNAGAPPALLY TALUK.

BY ADVS.SRI.PRATHEESH.P
SRI.S.ABHILASH
SMT.S.SEETHA

RESPONDENTS/RESPONDENTS/PLAINTIFFS :

1. LALAMMA JOHN, AGED 50 YEARS,
W/O.KUNJAMMAN JOHN, PUTHENVILA THAZHATHIL
THUVAYOOR VADAKKUM MURI, ERATH VILLAGE, ADOOR TALUK
PATHANAMTHITTA DISTRICT FROM THATHAMPALLIL THEKKATHIL
THODIYOOR MURI, THODIYOOR VILLAGE- 691331
2. JULY JOHN, AGED 22 YEARS,
D/O.LEELAMMA JOHN, PUTHENVILA THAZHATHIL,
THUVAYOOR VADAKKUM MURI, ERATH VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT FROM THATHAMPALLIL THEKKATHIL,
THODIYOOR MURI, THODIYOOR VILLAGE-691331

RSA.No. 793 of 2015 ()

**3. JOMON JOHN, AGED 20 YEARS,
S/O. LALAMMA JOHN, PUTHENVILA THAZHATHIL
THUVAYOOR VADAKKUM MURI, ERATH VILLAGE, ADOOR TALUK,
PATHANAMTHITTA DISTRICT FROM THATHAMPALLIL THEKKATHIL
THODIYOOR MURI, THODIYOOR VILLAGE - 691331**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

R.S.A.No.793 of 2015

Dated this the 19th day of October, 2015

JUDGMENT

The defendants in a suit for partition are the appellants in this Second Appeal.

2. The suit property belonged to one Mathew. The plaintiffs are the legal representatives of the son of Mathew namely, John who predeceased Mathew. The defendants are the daughters of Mathew as also one of the granddaughters of Mathew. According to the plaintiffs, they are entitled to 1/3rd share in the suit property and hence the suit for partition. The defendants contended that Mathew has executed a will in favour of the third defendant in

respect of the suit property and therefore, the suit property is not partible. The trial court found that the third defendant has not proved the execution of the will. The trial court also found that there are suspicious circumstances surrounding the execution of the will. Consequently, the suit was decreed rejecting the contention raised by the defendants. In appeal, the appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The defendants who are aggrieved by the concurrent decisions of the courts below, have thus come up in the second appeal.

3. Heard the learned counsel for the appellants.

4. Ext.B3 is the will relied on by the defendants.

As noticed above, the issues arising for consideration is as to the genuineness of Ext.B3 will as also its execution. DW5 and DW6 have been examined on the side of the defendants as the attestors of Ext.B3 will. Based on the evidence

tendered by DW2 that after the execution of Ext.B3 will, the will was taken to DW5 for attestation, the court below found that the attestation of the will was not in accordance with Section 63 of the Indian Succession Act. Further, the appellate court noticed that while the entire writings in page No.4 of the will are in the same format, the name and address of DW5 are written in a different format. The appellate court also noticed that the name and address of DW5 are inserted in page No.4 of Ext.B3 will after preparing the document. The appellate court further noticed that there is more than 6 cms. gap in between the last line of Ext.B3 will and the signature of the testator on its foot. The appellate court further noticed that the thump impressions in Ext.B3 are all blurred and over inked. It is also noticed by the appellate court that though the signature of the testator was disputed by the plaintiffs and though the admitted signatures of the testator were available on record,

the defendants have not taken any steps to compare the disputed signature of the testator with the admitted signatures of the testator available on record. Above all, Ext.B3 is not a registered will. It is from the aforesaid facts, the courts below found that there are suspicious circumstances surrounding the execution of Ext.B3 will.

In the said view of the matter, I do not find any reason to interfere with the concurrent decisions of the courts below. There is no question of law, much less any substantial question of law involved in the second appeal. The second appeal is without any merits and the same is accordingly dismissed.

P.B.SURESH KUMAR, JUDGE.

smm