

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

R.S.A.No. 904 of 2015 (G)

**AGAINST THE JUDGMENT IN A.S. No.39/2013 ON THE FILE OF THE SUB COURT,
CHAVAKKAD DATED 27-03-2014
AGAINST THE JUDGMENT AND DECREE IN O.S.No.369/2009 ON THE FILE OF THE
MUNSIFF COURT, CHAVAKKAD DATED 23.02.2013.**

APPELLANTS/APPELLANTS/PLAINTIFFS:

- 1. KAMALAKSHY, AGED 69 YEARS, [DIED]
W/O. LATE KANDAMPULLY KOCHUNNUY, KANDANASSERY VILLAGE,
KARIYANNOOR DESOM, TALAPPILLY TALUK.**
- 2. BALAKRISHNAN, AGED 49 YEARS,
S/O. LATE KANDAMPULLY KOCHUNNY, KANDANASSERY VILLAGE
KARIYANNOOR DESOM, TALAPPILLY TALUK.**
- 3. RAVEENDRAN, AGED 45 YEARS,
S/O. LATE KANDAMPULLY KOCHUNNY, KANDANASSERY VILLAGE,
KARIYANNOOR DESOM, TALAPPILLY TALUK.**
- 4. RADHA, AGED 41 YEARS,
D/O. LATE KANDAMPULLY KOCHUNNY, KANDANASSERY VILLAGE,
KARIYANNOOR DESOM, TALAPPILLY TALUK.**

BY ADV. SRI. G.SREEKUMAR (CHELUR)

*** AS PER THE ORDER DATED 07.10.2015 IN MEMO BEARING OF 5715/2015 DATED
29.09.2015, APPELLANTS 2 TO 4 AND RESPONDENTS 1 AND 2 ALREADY IN. PARTY-
ARRAY ARE RECORDED AS THE LEGAL HEIRS OF DECEASED 1ST APPELLANT.**

RESPONDENT(S)/RESPONDENTS/SOLE DEFENDANT AND 3RD PLAINTIFF:

- 1. UNNIKRISHNAN, AGED 48 YEARS,
S/O.KANDAMPULLY KOCHUNNI, KANDANASSERY VILLAGE,
KARIYANNUR DEESOM, TALAPPILLY TALUK - 680 001.**
- 2. SIVADASAN, AGED 47 YEARS,
S/O. KANDAMPULLY KOCHUNNI, KANDANASSERY VILLAGE
KARIYANNUR DESOM, TALAPPILLY TALUK - 680 001.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
26-11-2015, ALONG WITH RSA. 909/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

P.B.SURESH KUMAR, J.

R.S.A. Nos.904 & 909 of 2015

Dated this the 26th day of November, 2015

JUDGMENT

These appeals are preferred challenging the common judgment in A.S.Nos.38/2013 and 39/2013 on the file of Sub Court, Chavakkad. A.S.No.38/2013 was an appeal preferred challenging the decision in O.S.No.682/2007 and A.S.No.39/2013 was an appeal preferred challenging the decision in O.S.No.369/2009. The appellants in R.S.A.No.904 of 2015 are the plaintiffs 1, 2, 4 and 5 in O.S.No.369/2009 and the appellant in R.S.A.No.909 of 2015 is the plaintiff in O.S.No.682/2007. The suits O.S.Nos.682/2007 and 369/2009 were tried jointly treating O.S.No.369/2009 as the lead case. Since O.S.No.369/2009 was the lead case, I am referring to the parties in this judgment as they appear in O.S.No.369/2009.

2. O.S.No.369/2009 is a suit for partition. The suit property belonged to Kochunni, the father of the plaintiffs. They claimed 5/6 share in the suit property. The defendant set up a will executed by Kochunni and contended that the suit property

is not partible. Earlier, one among the plaintiffs filed O.S.No.682/2007 seeking a decree of permanent prohibitory injunction restraining the defendant from committing waste in the property. As noticed above, the suits were tried together and on the basis of the materials on record, the trial court accepted the case of the defendant and dismissed the suits. Though the plaintiffs took up the matter in appeals, the appellate court, on a re-appraisal of the evidence on record, confirmed the decision of the trial court. The plaintiffs who are aggrieved by the concurrent decisions against them have thus come up in these second appeals.

3. Heard the learned counsel for the appellant.

4. Going by the facts pleaded by the parties, the only issue before the courts below was as to whether the will set up by the the defendant could be accepted. On the basis of the materials on record, the trial court as also the appellate court found that the execution of the will has been proved to be in accordance with section 68 of the Indian Evidence Act. Likewise, it was also found by the courts below that the plaintiffs have not established any suspicions circumstances surrounding the execution of the will relied on by the defendant. The appellants

are unable to show any infirmity in the said decisions of the courts below. In the said circumstances, I do not find any ground to interfere with the concurrent decisions of the courts below.

In the result, the second appeals are dismissed in limine.

SD/-
P.B. SURESH KUMAR,
JUDGE

JV