

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

RSA.No. 1078 of 2015

JUDGMENT DATED 29-05-2015 IN AS 52/2014 OF SUB COURT, MANJERI
JUDGMENT DATED 26-03-2012 IN OS 37/2010 OF MUNSIF MAGISTRATE COURT,
PERINTHALMANNA

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

RAMANKUTTY CHETTIYAR,
S/O.RAMAN & KUTTAPPA CHETRTIAR,
AGED 80 YEARS, RESIDING AT ANAMANGAD AMSOM,
EDATHARA DESOM, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S)/APPELLANTS & RESPONDENTS 2 TO 5/PLAINTIFF & DEFENDANTS

2 TO 5:

1. P.THANKAMMA CHETTIYAR,
W/O.NADUTHODIYIL APPU CHETTIYAR,
AGED 82 YEARS, KARIMPUZHA AMSOM DESOM,
OTTAPPALAM TALUK, PIN - 679 101.
2. KUNHUNNI CHETTIYAR, S/O.PUNNOLIPUTHANVEETIL
RAMAN ALIAS KUTTAPPAN CHETTIYAR, AGED 90 YEARS,
ANAMANGAD AMSOM, EDATHARA DESOM,
PERINTHALMANNA TALUK, PIN - 679 322.
3. KUNHAN CHETTIYAR, S/O.PUNNOLIPUTHANVEETIL
RAMAN ALIAS KUTTAPPAN CHETTIYAR, AGED 76 YEARS,
ANAMANGAD AMSOM, EDATHARA DESOM,
PERINTHALMANNA TALUK, PIN - 679 322.
4. P.AMMALUKUTTY CHETTIYAR,
W/O.NADUTHODIYIL KRISHNANKUTTY CHETTIYAR,
AGED 88 YEARS, KARIMPUZHA AMSOM DESOM,
OTTAPPALAM TALUK, PIN - 679 101.
5. P.PARUKUTTY CHETTIYAR,
W/O.ANAKKAMPARAMB DECEASED KRISHNAN@
APPUKUTTAN CHETTIYAR, AGED 79 YEARS,
KARAKURISSDI AMSOM DESOM, MANNARKKAD TALUK,
PIN - 678 582.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.S.A.No.1078 of 2015

Dated 7th October, 2015.

J U D G M E N T

The first defendant in a suit for partition is the appellant.

2. The plaintiff and defendants are the children of one Ammalu Chettiar. The case of the plaintiff is that the suit property was obtained by Ammlu Chettiar and her children including the plaintiff as per Ext.A1 partition deed and on the death of Ammalu Chettiar, the suit property devolved on the plaintiff and defendants. It is also her case that there are six sharers and the plaintiff is entitled to 1/6 share in the suit property. The first defendant contended that suit property is not the property included in Ext.A1 partition deed as claimed by the plaintiff and that the same, on the other hand, is the

property obtained by him as per Ext.B1 mortgage. The first defendant also contended that he is in exclusive possession of the suit property. In other words, the contention of the first defendant is that the suit property is not partible. The trial court dismissed the suit holding that the plaintiff has not established that the suit property is the property obtained by the plaintiff and others as per Ext.A1 partition deed. The plaintiff challenged the decision of the trial court in appeal. The appellate court, on a reappraisal of the evidence on record, found that the suit property is the property obtained by Ammalu Chettiar and others as per Ext.A1 partition deed. Consequently, the appellate court passed a preliminary decree for partition as prayed for by the plaintiff. The first defendant who is aggrieved by the decision of the appellate court has thus come up in this second appeal.

3. Heard the learned counsel for the appellant.

4. The following are the substantial questions of law formulated for decision in the second appeal:

- i) Whether the interpretation given by the lower appellate court to Ext.B1 document is correct in law or not?
- ii) When it is the clear recitals in Ext.B1 that mortgage is created in respect of property mentioned in the schedule thereto separately and in addition to the mortgage already created based on 'Kanom' deed No.1801 of 1948, is the finding of the lower appellate court correct in law that plaint B schedule property is partible based on Ext.A1 partition deed or not?
- (iii) When it is the evidence on record that pursuant to Ext.B1 'Chundipanayadharam' appellant is in possession and enjoyment of 90 cents of land, was the finding of the lower appellate court that possession was not given to the appellant is correct or not?
- (iv) On correct appreciation of Ext.B1 and Ext.A2, is the finding of the lower appellate court against point No.1 that plaint B schedule property is available for partition is correct or not?

It is evident from the questions formulated for decision that the first defendant is not disputing the fact that the suit property is the property obtained by the plaintiff and others as per Ext.A1 partition deed. The attempt of the first defendant, on the other hand, is to establish his independent right over the suit

property on the strength of Ext.B1 mortgage deed. Ext.B1 mortgage deed does not state that the possession of property has been handed over to the first defendant. As such, the case of the first defendant that he has obtained possession of the suit property as per the said document must fail. Coming to the right claimed by the first defendant on the strength of Ext.B1 mortgage deed, it is seen that Ext.B1 is a document executed in the year 1964, whereas Ext.A1 partition deed was executed long thereafter, in the year 1969. It is also seen that the first defendant is a party to Ext.A1 partition deed. As noticed above, it is categorically stated in Ext.A1 partition deed that the suit property is allotted to the plaintiff and others. It is in the aforesaid circumstances, the appellate court took the view that the first defendant cannot dispute the title of the plaintiff and others over the suit property. The view taken by the appellate court cannot be said to be illegal or incorrect in any manner. There is no question of law, much less any substantial question of law, involved in this matter. The second appeal, in the

circumstances, is devoid of merits and the same is accordingly dismissed *in limine*. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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