

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

RSA.No. 1155 of 2015 ()

**AS 18/2013 of SUB COURT, KANNUR
FDIA NO. 3715/2010 IN OS 302/2008 AND OS 296/2009 of PRL.MUNSIFF COURT,
KANNUR**

APPELLANT/APPELLANT/RESPONDENT:-

**GANESAN B.N., S/O.BALAN, LEELA NIVAS
VELLUVAPPARA AZHIKODESOUTH AMSOM & DESOM, KANNUR.**

BY ADV. SRI.T.N.MANOJ

RESPONDENTS/RESPONDENTS-PETITIONERS 1 TO 5:-

- 1. B.N.GIREESAN, S/O.BALAN,
PADMALAYAM, AZHIKODE SOUTH AMSOM,
KANNUR - 670 009.**
- 2. LEELA, W/O.BALAN, VELLUVAPPARA,
AZHIKODE SOUTH AMSOM & DESOM
KANNUR - 670 009.**
- 3. GEETHA, W/O.LATE GANGADHARAN,
AACHILAM VAYAL, KANDOTH P.O.,PAYYANNOOR - 670001**
- 4. B.N.SEETHA, W/O.LATE BALAKRISHNAN,
C/O.RADHA JEWELLERY
CONVENT ROAD, VADAKARA - 670061**
- 5. DINESHAN
S/O.BALAN, C/O.GIREESAN, BNB LANE
VELLUVAPPARA, AZHIKODE, AMSOM KANNUR - 671001**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 02-11-2015 ALONG WITH RSA 1161/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

R.S.A.Nos.1155 & 1161 of 2015

Dated this the 2nd day of November, 2015

JUDGMENT

The decision in a composite final decree application filed in two suits for partition, as confirmed in appeal is under challenge in these second appeals. The suits are O.S.Nos.302 of 2008 and 296 of 2009 on the file of the Munsiff Court, Kannur. The appellant is the first defendant in O.S.No.302 of 2008 and the plaintiff in O.S.No.296 of 2009. O.S.No.302 of 2008 was decreed declaring the 1/6th share of the appellant in the suit property therein. O.S.No.296 of 2009 was also decreed declaring 1/6th share of the appellant in the suit property therein. The plaintiff in O.S.No.302 of 2008 filed the composite application for passing the final decree as the properties in the suit are to be partitioned among the same set of persons. In the said final

decree application, an Advocate Commissioner was appointed by the court. The Advocate Commissioner filed a report and plan. In the report submitted by the Advocate Commissioner, the appellant was allotted 7.05 cents out of the suit property in O.S.No.302 of 2008 and 16.50 cents out of the suit property in O.S.No.296 of 2009. There is a residential building in the suit property in O.S.No.296 of 2009 and the same was also allotted to the appellant. The trial court accepted the report and plan submitted by the Advocate Commissioner and passed a preliminary decree. The decision of the trial court has been confirmed in appeal by the appellate court. The appellant is aggrieved by the aforesaid concurrent decisions against him and hence these second appeals.

2. Heard the learned counsel for the appellant.

3. The owelty payable by the appellant to the remaining sharers as per the report of the Advocate Commissioner is less than Rs.1,00,000/-. The learned counsel for the appellant contended that since the appellant was not able to raise the said money, he requested the final decree court for

an adjustment in respect of the owelty by reducing the extent of immovable property allotted to him. According to the learned counsel, in so far as the said course of action is not prohibited, it should have been permitted by the final decree court. He also contended that the building in the suit property in O.S.No.296 of 2009 has not been valued by the Advocate Commissioner correctly. Coming to the second contention raised by the learned counsel for the appellant, the impugned order does not indicate that such a contention was raised by the appellant before the lower appellate court. No question of law is also seen framed in the second appeal by the appellant in relation to the said contention. Coming to the first contention raised in relation to the owelty payable by the appellant, it is seen that it is beneficial for the appellant to pay owelty in lieu of property, the valuation of which was made long ago. It is seen that the property is valued only at Rs.24,946/- per cent. If the contention of the appellant is accepted, he will have to forgo approximately three cents of property in lieu of the owelty payable by him. It is therefore clear that there is no reason for the appellant to feel

aggrieved by the impugned decision. It appears that the aforesaid contention has been raised by the appellant to cling on to the property for some more time. In the aforesaid circumstances, I do not find any merit in the second appeals and the same are, accordingly dismissed. All the interlocutory applications in the appeals are closed.

P.B.SURESH KUMAR, JUDGE.

smm