

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

RSA.No. 606 of 2014 ()

**AS 60/2009 of SUB COURT, OTTAPPALAM
OS 74/1993 of MUNSIFF-MAGISTRATE COURT, MANNARKAD**

APPELLANT/APPELLANT/1ST DEFENDANT :

**KUMARAN, S/O. CHAMI,
S/O CHAMI, PALAYAKKATHODI, PERIMBADARI POST
ARAKURISSI, MANNARKKAD-678762.**

BY ADV. SRI.R.SREEHARI

RESPONDENTS/RESPONDENTS/PLAINTIFF AND 2ND DEFENDANT :

- 1. AYYAPPAN, AGED 63 YEARS,
S/O. CHAMI.**
- 2. RAMAKRISHNAN,
S/O. CHAMI, BOTH RESIDING AT PALAYAKKATHODI,
PERIMBADARI POST, ANAKURISSI, MANNARKKAD-678762.**

R1 BY ADV. SRI.JACOB SEBASTIAN

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

R.S.A.No.606 of 2014

Dated this the 29th day of October, 2015

JUDGMENT

The first defendant in a suit for partition is the appellant in this second appeal. The preliminary decree passed in the suit is under challenge in the appeal.

2. The case of the plaintiff is that he has 1/3rd share in the suit property. The defendants are the siblings of the plaintiff. The first defendant contended that the plaintiff and the second defendant have released their rights in the suit property by virtue of Ext.A1 receipt and Ext.B3 settlement deed in his favour and that therefore, he became the absolute owner of the suit property. The second defendant filed a written statement endorsing the stand taken by the first defendant in the written statement filed

by him. The trial court took the view that in so far as there is no registered instrument by the plaintiff in respect of his share in the suit property in favour of the first defendant, it cannot be said that the plaintiff has released his rights over the suit property. Consequently, the trial court passed a preliminary decree declaring the $1/3^{\text{rd}}$ share of the plaintiff. Inadvertently, without noticing the written statement filed by the second defendant, the trial court also declared in the preliminary decree the $1/3^{\text{rd}}$ share of the second defendant over the suit property. The matter was taken up by the first defendant in appeal. The appellate confirmed the decision of the trial court. The first defendant has thus come up in the second appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the first respondent, the plaintiff.

4. The learned counsel for the appellant

submitted that during the pendency of the second appeal, the matter was referred for mediation and in the mediation proceedings, the dispute between the first defendant and the plaintiff has been settled. The said fact is endorsed by the learned counsel for the plaintiff. As such, the only question to be seen is as to whether the second defendant has any subsisting right in the suit property. As noticed above, the specific contention raised by the first defendant in the written statement is that the second defendant has released his rights over the suit property in his favour by virtue of Ext.B3 settlement deed and the said fact has been admitted by the second defendant in the written statement filed by him. The second defendant has also stated in the written statement that he has no subsisting right in the suit property.

In the aforesaid facts and circumstances, the appeal is allowed, the impugned decisions are set aside and

the suit is dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm