

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

RSA.No. 1326 of 2015(G)

A.S.NO.88/2013 OF ADDITIONAL DISTRICT COURT, NORTH PARAVUR

O.S.NO.476/2010 OF PRINCIPAL SUB COURT, NORTH PARAVUR

APPELLANT(S)/APPELLANT/DEFENDANT NO.1 :

**P.K.GOPI, AGED 70 YEARS,
S/O.LATE KRISHNANKUTTY, PUNNACHALIL HOUSE,
U.C COLLEGE P.O, NEAR CHENKULATH TEMPLE, ALUWAYE**

**BY ADVS.SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SRI.ROVIN RODRIGUES
SRI.BIJO MATHEW JOY**

RESPONDENT(S)/RESPONDENT/PLAINTIFFS AND DEFENDANTS 2 AND 3 :

- 1. BHAVANI, AGED 72 YEARS,
D/O.LATE KRISHNANKUTTY, THAIKATTU HOUSE, NOCHIMA,
N.A.D (P.O), KALAMASSERY, ERNAKULAM DISTRICT, PIN 683 101.**
- 2. AMMINY, AGED 68 YEARS,
D/O.LATE KRISHNANKUTTY, THATTEKADU PARAMBU,
KIZHAKKE VELIYATHUNADU, U.C.COLLEGE P.O.,
ALUVA, ERNAKULAM DISTRICT, PIN 683 101.**
- 3. SARASU, AGED 63 YEARS,
W/O.KARUNAKARAN, POLKATTUSSERY, CHENGAMANDU,
NASARA, ATHANI P.O, ANGAMALY, ERNAKULAM DISTRICT, PIN- 683 585.**
- 4. AMMUKUTTY, AGED 57 YEARS,
W/O.RAJAN, PANAMEDATH HOUSE, KOOVAPADI P.O.,
NEAR SOCIETY, PERUMBAVOOR, ERNAKULAM DISTRICT, PIN 683 544.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

R.S.A.No.1326 of 2015

Dated this the 21st day of December, 2015

JUDGMENT

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

2. The case of the plaintiffs is that the suit property belonged to their father Krishnankutty and that on his death, the same devolved on them and others. According to them, they are entitled 2/5th share over the suit property. The first defendant contested the suit. The case set up by the first defendant in the written statement is that he was the tenant of the suit property; that he obtained purchase certificate in respect of the same as per the provisions of the Kerala Land Reforms Act and that he has thus become

absolute owner of the property. The contention of the first defendant, in other words, was that the suit property is not partible. The trial court rejected the case of the first defendant and decreed the suit. The first defendant challenged the decision of the trial court after a lapse of about two years with a petition to condone the delay of 584 days in filing the appeal. The appellate court dismissed the delay petition and consequently dismissed the appeal also. The first defendant who is aggrieved by the concurrent decisions against him has thus come up in the second appeal.

3. Heard the learned counsel for the appellant.

4. As noted above, the specific case of the plaintiffs is that the suit property belonged to their father Krishnankutty. The second plaintiff gave evidence on behalf of the plaintiffs as PW1. The stand taken by the plaintiffs as regards the purchase certificate obtained by the first defendant is that the same had been obtained by him on

behalf of all the legal representatives of their father. Ext.A1 notice issued to the first plaintiff from the Land Tribunal in her capacity as the legal representative of the deceased father in the proceedings in which purchase certificate was issued to the first defendant was produced on behalf of the plaintiffs to substantiate the said stand taken by the plaintiffs. The first defendant who contended that he has exclusive right over the suit property did not adduce evidence in the suit to establish his independent title to the suit property. As such, it cannot be said that the decision taken by the trial court to decree the suit is incorrect.

In the said view of the matter, there is no merit in the second appeal and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm