

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

SA.No. 117 of 2000 (E)

AGAINST THE JUDGMENT IN OS 154/1982 of MUNSIF MAGISTRATE COURT,
PERAMBRA DATED 30-06-1995

AGAINST THE JUDGMENT IN A.S. 57/1995 OF SUB COURT, QUILANDY

APPELLANT(S):APPELLANT/DEFENDANT

- *1. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM POLIYAN, ERAVATTOOR AMSOM,
EDVARADA DESOM, KOYILANDY TALUK.
(DIED LR'S IMPEADED)
- * ADDL. APPELLANTS 2 TO 11 IMPEADED
- 2. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM VELLAYI, W/O. POLIYAN, ERAVATTUR POST,
VIA, PERAMBRA, KOYILANDY TALUK.
- 3. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM ARIYAI, D/O. POLIYAN, AGED 56 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
- 4. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM MEENAKSHI, D/O. POLIYAN, AGED 57 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
- 5. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM SHANKARAN, S/O. POLIYAN, AGED 54 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
- 6. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM KALYANI, D/O. POLIYAN, AGED 48 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
- 7. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM NARAYANI, D/O. POLIYAN, AGED 57 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
- 8. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM KAMALA, D/O. POLIYAN, AGED 46 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
- 9. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM SHANTA, D/O. POLIYAN, AGED 42 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.

SA.No. 117 of 2000 (E)

10. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM BAVA, D/O. POLIYAN, AGED 36 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
11. EDAVANAKOYILOTH PARAMBILE CHETTAPURAYIL
THAMASIKKUM SHOBA, D/O. POLIYAN, AGED 30 YEARS,
ERAVATTUR POST, VIA PERAMBRA KOYILANDY TALUK.
- * ADDL. APPELLANTS 2 TO 11 ARE IMPEADED AS THE LR'S OF
DECEASED SOLE APPELLANT AS PER ORDER DATED 05.06.2007 ON
I.A. NO. 878/2007.

BY ADVS.SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS:

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1. THEKKINA KUTHIRAPPETTIYIL KALLIANI AMMA,
RESIDING AT RAYARAMMANNIL AVALA AMSOM,
DESOM, KOYILANDY TALUK.
 - *2. THEKKINA KUTHIRAPPETTIYIL MADHAVAN NAMBIAR,
SCHOOL MASTER, RESIDING AT EDAVANA KOYILOTH
PARAMBIL, ERAVATTOOR AMSOM, EDAVARADA DESOM,
KOYILANDY TALUK. (DIED LR'S IMPEADED AS ADDL. R3 TO R5)
 - * ADDL. RESPONDENTS 3 TO 5 IMPEADED
 3. SAROJINI P.K., RESIDING AT EDAVANA KOYILOTH PARAMBIL,
ERAVATTUR AMSOM, EDAVARADA DESOM,
KOYILANDY TALUK.
 4. GEETHA V.K.,
RESIDING AT EDAVANA KOYILOTH PARAMBIL,
ERAVATTUR AMSOM, EDAVARADA DESOM,
KOYILANDY TALUK.
 5. ANANDAKUMAR V.K.,
RESIDING AT EDAVANA KOYILOTH PARAMBIL,
ERAVATTUR AMSOM, EDAVARADA DESOM,
KOYILANDY TALUK.
 - * ADDL. RESPONDENTS 3 TO 5 ARE IMPEADED BEING LEGAL
REPRESENTATIVES OF DECEASED 2ND RESPONDENT, AS PER ORDER
DATED 11.11.2011 IN I.A.2660/2011.

R1, R2 & ADDL.R3 TO R5 BY ADV. SRI.B.KRISHNA MANI
R1 & R2 BY ADV. SRI.V.PREMCHAND

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ds

P.BHAVADASAN, J.

S.A. No. 117 of 2000

Dated this the 18th day of September, 2015

J U D G M E N T

This second appeal was initially disposed of by judgment dated 06.06.2011. The operative portion of which reads as follows:

“In the result, this appeal is allowed, the judgments and decrees of both the courts below are set aside and the matter is remanded to the trial court for fresh disposal in accordance with law and in the light of what has been stated above. The parties will be at liberty to adduce fresh evidence and to get a proper report and plan prepared by the commissioner. The parties shall appear before the trial court on 26.07.2011. The trial court may make every endeavour to dispose of the suit as expeditiously as possible at any rate within six months from the date of appearance of the parties. There will be no order as to costs.”

2. After the matter was disposed of, it was brought to the notice of this Court that the 2nd respondent before this

Court died on 31.12.2009 and that the decree was therefore passed against a dead person and the matter was re-opened impleading the legal heirs.

3. C.M.Appln.No.1103/2011, I.A. Nos. 2660 of 2011 & 2661/11 were filed in S.A.No.117/2000. By separate elaborate order all those petitions were allowed and persons were brought on the party array.

4. It may be remembered that the case was re-opened only for the purpose of impleading the legal heirs of the deceased second respondent who died during the pendency of the proceedings.

5. However, the learned counsel appearing for the respondents insisted that the matter be heard afresh. It is not contemplated by law. The earlier order was passed after hearing both sides and judgment was dictated in the open court.

6. Before this Court now the learned counsel for the respondent raised the question that there were no crisis

regarding the identity of property which had persuaded this Court to remand the matter to the trial court. This Court found that the Commissioner report and plan prepared by the Commissioner are not helpful enough to identify the property.

7. The learned counsel pointed out that when the Commissioner reports were marked, there was no objection. The learned counsel also pointed out that there was no dispute regarding the identity or in other words identity was found established by the earlier proceedings. Therefore, it was not proper for this Court to re-agitate this issue again. In support of his contentions, the learned counsel relied on the decision reported in **Jasraj Indersingh vs. Hemraj Multanchand** [AIR 1977 Supreme Court 1011] wherein, it was held as follows:

“14. Viewed simplistically, the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the trial Court and escalated

to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject-matter is available for adjudication before us. If, on any other principle of finality statutorily conferred or on account of res judicata attracted by a decision in an allied litigation the matter is concluded, we too are bound in the Supreme Court. Otherwise, the whole lis for the first time comes to this Court and the High Court's finding at an intermediate stage does not prevent examination of the position of law by this Court."

8. One can have no quarrel with those propositions. Under the guise of impleading the legal heirs of the second respondent, there cannot be a re-hearing of the case all over again. The learned counsel for the respondent has no case that the argument now advanced were in fact addressed to before this Court earlier and this Court had not considered the same. This Court finds no reason to interfere with the order passed on 06.06.2011. The order dated 06.06.2011 will stand.

This appeal is disposed of. The parties shall appear before the trial court on **29.10.2015**.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge