

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

SA.No. 208 of 2001 ()

**(AGAINST THE JUDGMENT IN AS.NO. 183/1997 OF PRL.SUB COURT,
KOZHIKODE DATED 07-08-2000)**

**(AGAINST THE JUDGMENT IN OS.NO. 388/1994 OF ADDL.MUNSIFF COURT,
KOZHIKODE-1 DATED 17-03-1997)**

APPELLANT(S)/APPELLANTS/PLAINTIFFS :

1. M.KRISHNANKUTTY NAIR

2. SANEESH (MINOR)

3. SANDIPTHA (MINOR)

**(MINORS 2 AND 3 ARE REPRESENTED BY THEIR FATHER AND
GUARDIAN THE 1ST APPELLANT)**

**ALL ARE RESIDING AT KARUVISSERI AMSOM DESOM,
KOZHIKODE TALUK.**

**BY ADVS.SRI.G.UNNIKRISHNON
SRI.K.SANEESH KUMAR**

RESPONDENT(S)/RESPONDENTS/DEFENDANTS 2 TO 4 :

**1. LAKSHMIKUTTY AMMA,
MANNODIYIL HOUSE, P.O.PAYIMBRA,
(VIA) KUNNAMANGALAM, KOZHIKODE.**

**2. PARUKUTTY AMMA, D/O.MALU AMMA,
KOTTANGOTTU HOUSE, PARAMBIL BAZAR,
MARIKUNNU.P.O., KOZHIKODE.**

**3. THANKAM AMMA, D/O.MALU AMMA, 'PRASANTHI',
P.O.KARAPARAMBA, KOZHIKODE-10.**

BY ADV. SRI.N.JAMES KOSHY

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 22-06-2015, THE COURT ON 19-08-2015 DELIVERED
THE FOLLOWING:**

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P.B.SURESH KUMAR, J.

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Dated this the 19th day of August, 2015.

J U D G M E N T

The plaintiffs in a suit for partition are the appellants in this appeal.

2. The plaint schedule property is a building. The plaint schedule building originally belonged to one Narayanan Nair and his mother Paru Amma. On their death, the properties held by Narayanan Nair and Paru Amma were partitioned as per Ext.A1 partition deed dated 13.6.1977. The parties to Ext.A1 partition deed were the wife and children of Narayanan Nair. 17.28 cents of property in which the plaint schedule building is situated, was allotted to the share of the wife of Narayanan Nair in the said partition. One of the daughters of Narayanan Nair

namely, Radhamma died after the partition. The first plaintiff is the husband of Radhamma and plaintiffs 2 and 3 are their children. The first defendant is the mother of Radhamma to whom 17.28 cents of property in which the plaint schedule building is situated was allotted as per the terms of the partition deed referred to above. While effecting Ext.A1 partition deed, the plaint schedule building was not partitioned. According to the plaintiffs, they being the legal representatives of Radhamma, are entitled to 1/5th share over the plaint schedule building and the suit was filed for partition of the said right of the plaintiffs.

3. The defendants contested the suit by filing a written statement. In the written statement filed by the defendants, they admitted that Radhamma had 1/5th right over the plaint schedule building. However, the contention raised by them was that on the death of Radhamma, her rights devolved on plaintiffs 2 and 3 and her mother, namely, the first defendant and that the first plaintiff has no

right in the property.

4. The trial court found that the intestate succession of Radhamma was governed by Section 17 of the Hindu Succession Act and therefore on the death of Radhamma, her share of rights in the plaint schedule building devolved on plaintiffs 2 and 3 and the first defendant. Consequently, the trial court passed a decree declaring $2/15^{\text{th}}$ share of the plaintiffs 2 and 3 over the plaint schedule building and a preliminary decree was passed accordingly.

5. The decision of the trial court was challenged by the plaintiffs before the appellate court. During the pendency of the appeal, the first defendant died. The appellate court though held that the deceased Radhamma was governed by Section 17 of the Hindu Succession Act, modified the decree passed by the trial court holding that the plaintiffs are entitled to $1/4^{\text{th}}$ share in the plaint schedule building. The plaintiffs are aggrieved by the said

decision of the appellate court in so far as it held that Section 17 of the Act is the provision applicable for the intestate succession of Radhamma.

6. A perusal of the appellate judgment indicates that even while holding that Section 17 of the Act is the provision applicable for the intestate succession of Radhamma, the appellate court held that the first plaintiff, the husband of Radhamma is also entitled to a share. Entry (a) to Section 17(ii) does not include the husband of the deceased person. It contains only sons, daughters and the mother. Husband comes only in Entry (b) to Section 17(ii). Section 17 of the Act is in the nature of an amendment to Section 15 of the Act in relation to persons who would have been governed by Marumakkattayam Law, if Hindu Succession Act had not been enacted. As such, the order of succession and the manner of distribution among the heirs provided for Section 16 of the Act applies to Section 17 of the Act as well. If the provision contained in Section 16 of

the Act concerning the order of succession and the manner of distribution of share among the heirs, is applied to Section 17 of the Act also, it cannot be held that the husband is entitled to a share in the property held by a female Hindu covered by the said Section. However, since the first defendant died during the pendency of the appeal, plaintiffs 2 and 3 have become eligible to claim 1/4th share in the plaint schedule building and as such, the mistake committed by the appellate court as pointed above may not affect the conclusion arrived at by the appellate court.

6. As noticed above, the grievance of the plaintiffs in this appeal is against the finding of the appellate court that Section 17 of the Act is the provision applicable in relation to the intestate succession of Radhamma. I have disposed of A.S.Nos.254 & 255 of 2001 between the same parties in relation to another item of property held by Radhamma today by separate judgment holding that Section 17 of the Act is a provision applicable in so far as

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the intestate succession of Radhamma is concerned.

In the light of the said decision, there is no merit in the Second Appeal and the same is, accordingly, dismissed.

Sd/-
P.B.SURESH KUMAR,
(JUDGE)

Kvs/-

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PA TO JUDGE.