

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH

TUESDAY, THE 18TH DAY OF SEPTEMBER 2012/27TH BHADRA 1934

SA.No. 752 of 2002 (F)

AS.98/2000 of SUB COURT, CHERTHALA
OS.793/1997 of PRL.MUNSIFF COURT, CHERTHALA

APPELLANT(S)/APPELLANT/1ST DEFENDANT::

SANKARAN SARAVANAN, S/O. SANKARAN,
AGED 50 YEARS, HOUSE NO.146/VIII, AROOR MURI
AROOR VILLAGE, CHERTHALA TALUK.

BY ADVS.SRI.P.M.JOSHI
SRI.T.H.CHACKO

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS/2ND DEFENDANT::

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1. GOWRI, W/O. SANKARAN,
ALAKKADAVIL, AROOR MURI, AROOR VILLAGE
CHERTHALA TALUK.
 2. SOUMINI,
NIKARTHIL COLONY, T.V.PURAM, VAIKOM.
 3. AJITHAMMA,
ALAKKADAVIL, AROOR VILLAGE.
 4. INDIRA PANACHIKKAL VEEDU,
UDAYAMPEROOR, ERNAKULAM.
 5. LEELA, W/O. SARAVANAN,
H.NO.146/VIII, ALAKKADAVIL, AROOR VILLAGE.

R2 TO R4 BY ADV. SRI.JIJO PAUL KALLOOKKARAN
R1 BY ADV. SRI.A.C.DEVY

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18-09-2012,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

THOMAS P. JOSEPH, J.
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S.A. No. 752 of 2002
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Dated this the 18th day of September, 2012

JUDGMENT

This second appeal arises from the judgment and decree of the Principal Munsiff's Court, Cherthala in O.S. No. 793 of 1997, confirmed by the Sub Court, Cherthala in A.S. No. 93 of 2000. There is now a preliminary decree for partition of item Nos. 1 and 3 of the plaint Schedule.

2. The second appeal is filed by the first defendant challenging the decision of the courts below as to the partibility of item No.1 notwithstanding that in respect of the said property, the appellant/first defendant has obtained a purchase certificate. The courts below found that the said property belonged to the late Ittan Sankaran, father of the appellant/first defendant and others and the husband of the first respondent/first plaintiff and hence is partible.

3. In the second appeal, the substantial questions of law framed concerned the right claimed by the appellant/first defendant over item No.1 in view of the purchase certificate obtained in his name.

4. It is pointed out by the learned counsel for the

plaintiffs/respondents that in respect of item No.1, the appellant/first defendant has filed O.S. No. 247 of 1994 against plaintiffs 1 and 3 seeking a decree for prohibitory injunction as if the appellant/first defendant is the absolute owner in possession of item No.1. That suit was dismissed and A.S. No. 23 of 1996 arising therefrom was also dismissed. The dismissal of the appeal was confirmed by this court by judgment dated 30.06.2011 in S.A. No. 275 of 1998. The learned counsel submits that this court found that the mere fact that the appellant/first defendant has obtained purchase certificate in his name concerning item No.1 of the plaint schedule would not mean that he is the exclusive owner of the said property. The learned counsel submits that the Supreme Court has dismissed the SLP arising from the judgment and decree in S.A. No. 275 of 1998.

5. It is submitted by the learned counsel for the plaintiff that since the substantial questions of law framed concerned only the partibility of item No.1 and in O.S. No. 247 of 1994 and the appeals arising therefrom it is found that the said property belongs to the first defendant and the plaintiffs in co-ownership,

nothing survives for a decision in this second appeal.

The appellant and the counsel are absent. There is no representation. Hence the second appeal is dismissed for non-prosecution without any order as to cost.

smv

**THOMAS P.JOSEPH,
JUDGE**