



2024:KER:20829

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 3RD DAY OF JANUARY 2024 / 13TH POUSHA, 1945

OP(C) NO. 1151 OF 2021

IN O.S. NO.1301/2016 OF MUNSIFF'S COURT, KODUNGALLUR

PETITIONER/PETITIONER IN I.A./PLAINTIFF IN THE SUIT:

- 1 RAJINI
AGED 51 YEARS, D/O.VILWAMANGALATH APPU,
VILWAMANGALATH HOUSE, PULLOT VILLAGE & DESOM,
KODUNGALUR TALUK, PIN-680 663.
- 2 REMANI
AGED 53 YEARS, D/O.VILWAMANGALATH APPU,
VILWAMANGALATH HOUSE, PULLOT VILLAGE & DESOM,
KODUNGALUR TALUK, PIN-680 663.
BY ADVS.
P.SANJAY
A.PARVATHI MENON
BIJU MEENATTOOR
PAUL VARGHESE (PALLATH)
P.A.MOHAMMED ASLAM
KIRAN NARAYANAN
PRASOON SUNNY
RAHUL RAJ P.

RESPONDENTS/RESPONDENTS IN I.A./DEFENDANTS IN THE SUIT:

- 1 SEETHA
AGED 60 YEARS, W/O.VILWAMANGALATH VISWAMBARAN,
VILWAMANGALATH HOUSE, THAZHEKKAD VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, PIN-680 697.
- 2 ANANDAN
AGED 33 YEARS, S/O.VILWAMANGALATH VISWAMBARAN,
VILWAMANGALATH HOUSE, THAZHEKKAD VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, PIN-680 697.
- 3 ANITHA
AGED 31 YEARS, D/O.VILWAMANGALATH VISWAMBARAN,
VILWAMANGALATH HOUSE, THAZHEKKAD VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, PIN-680 697.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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J U D G M E N T

Dated, this the 03rd day of January, 2024

The petitioners herein are the plaintiffs in O.S. No.1301/2016, a suit for partition, pending before the Munsiff's Court, Kodungallur. Pursuant to Ext.P2 preliminary decree, the parties applied for final decree. An Advocate Commission was appointed and she preferred Ext.P3 report and plan. While measuring out the property for the purpose of final decree application, it was found that there was an excess extent of 3.470 cents in the possession of the parties, over and in addition to the 20.200 cents of land covered by their title deed. As per the preliminary decree, the respondents/defendants are entitled to 1/36 share of the property. The excess extent was apportioned accordingly and 100 square links, corresponding to 1/36 of 3.470 cents, was allotted contiguous to



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the property allotted to the respondents' share. The remaining extent of the excess land was allotted to the share of the plaintiffs. Picking up an objection as regards the above course adopted by the Advocate Commissioner in Ext.P3 report and plan, objections were preferred by both the plaintiffs and the defendants. Thereafter, the plaintiffs preferred an application to amend the plaint to alter the total extent of the property for partition, so as to include the excess extent as well, with a corresponding prayer to amend the preliminary decree also. By virtue of Ext.P8 order, both these applications were dismissed, challenging which, the instant Original Petition is filed.

2. Heard the learned counsel for the petitioners. Though the respondents were served, there is no representation for them.

3. Learned counsel for the petitioners seriously



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assailed in Ext.P8 order, pointing out that the reasons stated for dismissing Ext.P6 application for amendment cannot be sustained on any reckoning. Learned counsel therefore seeks to set aside Ext.P8 order.

4. Having heard the learned counsel for the petitioners and having perused the records, this Court is of the opinion that an amendment to the plaint as also to the preliminary decree is not strictly warranted, only for the reason that an excess extent in the possession of the parties have been found, while measuring out the property, for the purpose of final decree. The parties had approached the court and joined issues based on the extent available under their title deed for the relief of partition. A preliminary decree only declares the rights/shares of the parties to the property, which is liable to be partitioned. If an excess extent is found in possession of the parties, the same is also liable to be partitioned



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in accord with the proportion of shares held in the final decree, for which purpose, an amendment of the plaint, or for that matter, of the preliminary decree is hardly indicated. It is well-nigh within the powers of the final decree court to deal with the excess extent of land found in the possession of the parties, along with the extent covered by their title deed. As between the parties, the excess extent is also liable to be partitioned. In the instant case, what has been done by the Commissioner is that the excess extent of 3.470 cents is also divided by and between the parties and an extent corresponding to 1/36 share of the defendants/respondents has been allotted contiguous to the property allotted to the share of respondents; and the remaining extent, out of the excess land, has been allotted to the property allotted to the share of the plaintiffs. This Court finds that the course adopted by the Commissioner does not suffer from any patent illegality or infirmity.



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5. In the circumstances, the final decree court is directed to proceed with the matter in accordance with law. This Court clarifies that it is open for the final decree court to deal with the excess extent found in the possession of the parties, without a formal amendment to the plaint, as also, to the preliminary decree. It is further observed that none of the observations made in Ext.P8 order will stand in the way of allotting the excess extent as well to the parties in proportion to their shares, as held in Ext.P2 preliminary decree.

The Original Petition is disposed of, as above.

Sd/-

C. JAYACHANDRAN
JUDGE

**APPENDIX OF OP(C) NO.1151/2021****PETITIONER'S EXHIBITS:-**

- EXHIBIT P1 TRUE COPY OF THE PLAINT IN OS 1301/2016 OF THE HON'BLE MUNSIFFS, KODUNGALLUR DATED 23.06.2016.
- EXHIBIT P2 TRUE COPY OF THE PRELIMINARY JUDGMENT IN OS 1301/2016 OF THE HON'BLE MUNSIFF, KODUNGALLUR DATED 05.03.2018.
- EXHIBIT P3 TRUE COPY OF THE ADV. COMMISSIONER'S REPORT WITH THE SKETCH IN OS 1301/2016 IN FDIA 275/2019 DATED 13.01.2020.
- EXHIBIT P4 TRUE COPY OF THE OBJECTIONS TO PETITIONER'S REPORT IN OS 1301/2016 IN FIA 275/2019 DATED 27.01.2020.
- EXHIBIT P5 TRUE COPY OF THE OBJECTIONS FILED TO THE RESPONDENTS DATED 27.01.2020.
- EXHIBIT P6 TRUE COPY OF I.A. 1/2020 IN OS 1301/2016 FILED BY PETITIONERS DATED 11.02.2020.
- EXHIBIT P7 TRUE COPY OF THE COUNTER FILED BY RESPONDENTS IN FDIA 275/2019 IN OS 1301/2016, DATED 20.08.2020
- EXHIBIT P8 TRUE COPY OF THE ORDER IN IA 1/2020 IN OS 1301/2016 OF THE HON'BLE MUNSIFF, KODUNGALLUR DATED 10.03.2021