

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 3RD DAY OF MARCH 2016/13TH PHALGUNA, 1937

FAO.No. 112 of 2015 ()

(AGAINST THE ORDER OF SUB COURT, KOZHIKODE DATED 09.04.2015 IN IA
4012/2014 IN F.D.I.A 6557/92 IN OS 9/1989)

APPELLANT(S)/PETITIONERS/FINAL DECREE PETITIONERS/PLAINTIFFS:

1. A.T.MAMMED KOYA
S/O.K.P.KASIM HAJI, KACHERI AMSOM DESOM
KOZHIKODE TALUK, KOZHIKODE DISTRICT.
2. A.T. ALI KOYA,
S/O.K.P.KASIM HAJI, KACHERI AMSOM DESOM
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT(S)/RESPONDENT/DEFENDANT:

A.T. UMMER KOYA
SUPERVILLA, JAYANTHI NAGAR HOUSING COLONY
KOZHIKODE - 673 009.

R1 BY ADV. SRI.T.KRISHNANUNNI (SR.)
R1 BY ADV. SMT.MEENA.A.
R1 BY ADV. SRI.VINOD RAVINDRANATH
R1 BY ADV. SRI.SAJU.S.A
R1 BY ADV. SRI.K.C.KIRAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
03-03-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SKV

**THOTTATHIL B. RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

F.A.O. No.112 of 2015

Dated this the 3rd day of March, 2016

JUDGMENT

Thottathil B. Radhakrishnan, J.

1. This appeal is against an order by which the court below refused to remove the defendant from receivership or issued an order to hand over the documents of the building to the plaintiffs. The matter arises from a suit for partition of immovable properties as also for dissolution and rendition of accounts regarding a partnership.

2. Heard the learned counsel for the appellants and the learned senior counsel for the respondent.

3. Plaintiffs are the appellants. Defendant is their brother. The result of the preliminary decree is that there is a declaration of rights over the immovable property and the movables and also a decree for rendition of accounts following the dissolution of the partnership business of a hotel by name 'Sajana'. The two plaintiffs together take 40% of the share of profits of the partnership business and the defendant keeps 60%. In this judgment, we are not touching on the ratio as to the allotment of

the immovable or movable properties since that is not the subject matter of the application from which this appeal arises.

4. The application was filed by the plaintiffs before the court below alleging that the defendant who was appointed as a receiver to run the partnership business has not been rendering accounts and that the terms under which the defendant is holding on to the partnership assets have become feeble with passage of time and the amounts fixed earlier by this Court are disproportionately low with the change of times.

5. We have examined the contents of the common judgment rendered by this Court on 30.6.1989 in CMA Nos. 97/89 and 114/89 under which the arrangement of receivership was made in the manner in which it is now operated. Later, in another round, this Court issued judgment dated 6.2.1995 in CMA No.298/94 which also does not modify the terms of receivership in terms of the judgment dated 30.6.1989 referred to above.

6. While different arguments are addressed by the learned counsel on either side, pointing out that there is a protracted final decree proceedings, we see that the matter in hand only relates to the receivership as regards the partnership business, viz, Sajana Hotel. This appeal does not relate to any matter touching

the directions issued by this Court, earlier relating to the other shop rooms or the severability or otherwise of the plaint schedule immovable property. We mention that here and now, because we are told that the Commissioner has reported to the court below where the final decree application is pending that the immovable property cannot be divided by means and bounds. It is up to that court to consider as to what would be the option that has to be taken in such a situation, having regard to the provisions of laws including those contained in the Partition Act and Civil Rules of Practice. We do not express anything on that matter.

7. In so far as the receivership in relation to the partnership business Sajana Hotel is concerned, the clear terms of the afore-noted judgments in the three CM Appeals which have run for so many years by now are that the defendant who is the receiver and who is allotted 60% of the shares of the partnership going by the preliminary decree has to remit an amount of 30,000/- per year which will be taken as the share of profits of the plaintiffs as regards that partnership business. There is no direction in any of those judgments as to rendition of accounts of the partnership business or in relation to any other matter.

8. If the directions issued by this Court to the receivers through

the earlier judgments, as regards the letting out of rooms etc. need any further clarification, it is for the parties to move the appropriate court for such relief in accordance with law. We leave open that issue which is not the subject matter of this appeal or the application from which the appeal arises.

9. The court below will consider the request of any of the parties for expeditious disposal of the final decree proceedings.

Subject to the aforesaid, this appeal is dismissed.

Sd/-
(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

SKV