

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

OP(C).No. 657 of 2015 (O)

IN OS 9/1989 of PRINCIPAL SUB COURT, KOZHIKODE

PETITIONER(S):

1. A.T.MAMMED KOYA AGED 61 YEARS
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):

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

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE JUDGMENT DATED 30-06-1989 IN CMA 97/1989 AND CMA 114/1989
- EXHIBIT P2** TRUE COPY OF THE JUDGMENT IN CMA 298/1994 DATED 6-2-95
- EXHIBIT P3** TRUE COPY OF THE ORDER DATED 13-3-1986 IN IA 6557/1992 IN OS 9/1989
- EXHIBIT P4** TRUE COPY OF THE ORDER DATED 27-3-1996 IN IA 3187/1996 IN OS 9/1989
- EXHIBIT P5** TRUE COPY OF THE JUDGMENT DATED 2-7-2009 IN AS 555/1996 AND CMA 116/1996
- EXHIBIT P6** TRUE COPY OF THE ORDER PASSED IN IA 2219/2014 IN I.A. 6557/1992 IN O.S. 9/1989 DATED 24-07-2014
- EXHIBIT P7** TRUE COPY OF THE IA 4012/2014 IN IA 6557/92 IN OS 9/1989 OF THE SUB COURT,KOZHIOKODE DATE: 17.10.14
- EXHIBIT P8** TRUE COPY OF THE OBJECTION IA 4012/2014 IN IA 6557/92 IN OS 9/1989 DATE. 17.11.2014

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

PA. TO JUDGE

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P.BHAVADASAN, J.

O.P.(C) No. 657 of 2015

Dated this the 11th day of March, 2015

J U D G M E N T

In a partition suit of the year 1989, a preliminary decree was passed on 13.03.1992. Final decree proceedings were initiated soon thereafter and I.A. No. 6557/1992 was filed. Several proceedings have occurred during the final decree proceedings; on two occasions, the parties approached this Court. It is worthy to note that the defendant was appointed as party receiver and he was allowed to continue even after the preliminary decree. In the final decree proceedings, when one of the parties approached this Court, this Court permitted him to continue as receiver hoping that the final decree proceedings would be completed in a short span of time. That would be evident from Ext.P2 order dated 06.02.1995.

2. Ext.P6 order passed by the court below shows that the receiver has been negligent and has not been filing accounts as directed by this Court. Therefore, direction was issued to file the accounts. The lethargy on the part of the receiver compelled the petitioners to move Ext.P7 petition for removal of receiver and appointing them as receiver on deposit of certain amount. To that Ext.P7 application, Ext.P8 objection has been filed.

3. At the time of hearing the only prayer made is for a direction to the court below to take up Ext.P7 and dispose it of on merits, as expeditiously as possible so that property may be preserved and saved from Commission of waste.

4. If the allegations are true, the matter is indeed serious. This Court had expressed the pious hope in 1995 about the completion of suit and we are in 2015. Yet the matter is being dragged on. The fact remains that as could be seen from Ext.P6 that the receiver has not been filing accounts.

5. It was under above circumstances that the petitioners were compelled to move Ext.P7 application. Ext.P8 counter has been filed by the concerned defendant. There is no reason as to why the court below should not dispose of the same.

6. In the nature of order that is proposed to be passed, it is felt that notice to the respondent is unnecessary.

This petition is disposed of directing the Sub Court, Kozhikode to take up Ext.P7 application i.e. I.A.No. 4012/2014 filed by the petitioners herein and dispose it of on merits, after hearing both sides, in accordance with law, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. The court below may make every effort to expedite the passing of the final decree.

**P.BHAVADASAN
JUDGE**

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