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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 10TH DAY OF MARCH 2025 / 19TH PHALGUNA, 1946OP(C) NO. 2803 OF 2024PETITIONER/S:

- 1 V.S. SUJITH, AGED 58 YEARS, S/O. LATE V.K. SREENIVASAN, 35/200, SIVANIKETH BUILDING, KALATHILPARAMBU ROAD, ERNAKULAM TOWN, ERNAKULAM TALUK, PIN - 682023
- 2 V.S. SANJAY, AGED 49 YEARS, S/O. LATE V.K. SREENIVASAN, 35/200, SIVANIKETH BUILDING, KALATHILPARAMBU ROAD, ERNAKULAM TOWN, ERNAKULAM TALUK, PIN - 682023

BY ADVS.M.P.MADHAVANKUTTY
MATHEW DEVASSI
ANANTHAKRISHNAN A. KARTHA
ANGEL GYLES LIKE

RESPONDENT/S:

- 1 V.S. VINAYASOBHINI, AGED 87 YEARS, W/O.LATE V.K. SREENIVASAN, 35/200, SIVANIKETH BUILDING, KALATHILPARAMBU ROAD, ERNAKULAM TOWN, ERNAKULAM TALUK, PIN - 682016
- 2 V.S. SARITHA, AGED 61 YEARS
W/O. BHAVADAS, MANNIRAD HOUSE, PALAKKAD,, PIN - 678702
- 3 V.S. SUMITHA, AGED 57 YEARS, W/O. T.R. BALAN, 27/2265 B, RAMANILAYAM, VIDYA NAGAR, KADAVANTHRA, COCHIN, PIN - 682020
- 4 V.S. SAJITHA, AGED 52 YEARS, W/O. M.P. PREMCY, MADAMBIKATTIL HOUSE, UNITY FIRST LINE ROAD,, KURIACHIRA, TRICHUR, PIN - 680006

BY ADVS.Ramprasad Unni T
K.RAMAKUMAR (SR.) (R-245)
S.M.PRASANTH(K/957/1994)
SHEHIN S.(K/3733/2023)
DEVIKA S.(K/004077/2023)
RESHMA DAS P.(K/004326/2024)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 7.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT(Dated this the 10th day of March, 2025)

Petitioners are respondent Nos.1 and 2 in I.A. No.2 of 2024 in F.D.A No.318 of 2019 on the files of Additional Sub Court, Ernakulam. O.S.No.71 of 2016 was filed for partition. The suit was decreed ex parte. In the final decree application, the petitioners contended that A schedule property is having an extent of 35 cents, situated in Sy. No.602/2 in Karithala village, Kanayannoor Taluk, Ernakulam district, and there is a multi-storeyed building in the said property with door No.XXXV/73, surrounded by a compound wall. As per the preliminary decree, plaint A schedule is to be divided into 12 equal shares, 4 shares allotted to 1st plaintiff, 2 shares each to plaintiff Nos.2 to 4 and 1 share each to the defendants. An Advocate commissioner was appointed in the final decree proceedings, and he divided the property and submitted a report.



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2. According to the petitioner, the 1st respondent resides with her daughter, the 2nd respondent. On the ground floor of the building in A schedule, the office of G.P. Nair plantations, is situated. IA No.2 of 2024 is filed to appoint an Amin to break open the door /shutter on the first floor of the building in A schedule. The petitioners filed an objection to the said application. The main contention raised in the objection is that the 1st respondent has executed a lease agreement with regard to the ground floor of the building, and if Amin is allowed to break open the door, he will have to interfere with the possession of the ground floor wherein the office of G.P.Nair Plantations is functioning. The court below, by Ext.P10, directed the respondents to hand over the key of the building situated in plaint A schedule property to the 1st petitioner.

3. Heard counsel for the petitioners and the respondents.

4. Sri M.P.Madhavankutty, the counsel appearing for the



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petitioners, submits that as per Ext.P7 lease agreement, executed on 01.12.1987 between the M/s.G.P. Nair Plantations and the 1st respondent herein, 12 rooms in the ground floor and 1500 sq ft of land with a shed at the eastern side of the whole building is given for a nominal monthly rent of Rs.5/- and the 1st respondent has received an amount of Rs 5 lakhs as security deposit which is to be refunded on termination of lease without interest. It was contended in the counter affidavit filed to I.A.No.2 of 2024, that the 1st applicant in the F.D.A. is not residing in the 1st floor of A schedule property and she is residing with her daughter, the 2nd respondent. The present Manager of M/s.G.P.Nair Plantations is the petitioner herein, and therefore, the possession he enjoys on the ground floor cannot be interfered with.

5. It was also contended that plaint A schedule property is in a highly dilapidated condition and the petitioner and another expended more than Rs.17 lakhs for doing repair works. The 2nd



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respondent in the F.D.A. is residing on the 1st floor of the building. The counter affidavit specifically states that the 1st petitioner can stay in the above house according to her pleasure on the 1st floor. The counsel also argued that while Ext.P10 was passed, though both sides were represented, the petitioners' counsel was not heard, and therefore, he should be given an opportunity to bring the actual fact before the court below.

6. I.A. No.2 of 2024 is filed by the plaintiffs in O.S. No. 71 of 2016. The contention of the 1st petitioner was that she is residing on the 1st floor of petition A schedule building, and the ground floor is lying vacant. The 2nd respondent, the younger son of the 1st petitioner, was also staying with her, as his wife and children were staying in a different house. The respondents have now let out a portion of the ground floor of the building to 3rd parties, and they take rent. The building in A schedule property is locked by the respondents, and therefore, the lock of the door



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in the ground floor leading to the 1st floor is to be removed with the assistance of Amin and SHO.

7. A perusal of the Ext.P10 order would show that though it refers to the parties being heard, none of the contentions raised by the petitioner in the counter nor the reasons for deputing an Amin to break open the lock are considered. It is because a preliminary decree was passed and plaintiffs are entitled to shares, the respondents were directed to hand over the key. When an order is passed in a final decree application, the court has to give reasons for arriving at the conclusion to direct the respondents to hand over the key of the building. The objections raised by the contesting respondents have to be looked into, and only after overruling the said objections, can such a direction be issued. This is absent in the Ext.P10 order. Therefore, taking into consideration the facts and circumstances of the case and the dilapidated condition of the building, I deem it appropriate to set



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aside Ext.P10 and direct to reconsider I.A.No.2 of 2024 in F.D.A. No.318 of 2019 afresh, after affording an opportunity of hearing to the petitioners and respondents. Orders shall be passed by the court within a period of 3 months from the date of receipt of a copy of this judgment.

With the above-said directions, this O.P.(C.) is disposed of.

SD/-
BASANT BALAJI
JUDGE

dl/



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APPENDIX OF OP(C) 2803/2024

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE PLAINT IN O.S. NO. 71/2016 BEFORE THE SUBORDINATE JUDGES COURT, ERNAKULAM
Exhibit P2	TRUE COPY OF THE JUDGMENT IN O.S. NO. 71/2016 DATED 21-08-2017 BEFORE THE SUBORDINATE JUDGES COURT, ERNAKULAM
Exhibit P3	A TRUE COPY OF THE RECEIVER PETITION BEFORE THE SUBORDINATE COURT, ERNAKULAM
Exhibit P4	THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS
Exhibit P5	A TRUE COPY OF THE INTERLOCUTORY APPLICATION NO. 2/2024 BEFORE THE HON'BLE SUB COURT, ERNAKULAM
Exhibit P6	A TRUE COPY OF THE OBJECTION IN I.A. NO. 2/2024 BEFORE THE SUB COURT ERNAKULAM
Exhibit P7	A TRUE COPY OF THE LEASE AGREEMENT DATED 01-12- 1987
Exhibit P8	A TRUE COPY OF THE PLAN IS SUBMITTED BY THE ADVOCATE COMMISSIONER
Exhibit P9	A TRUE COPY OF THE REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER
Exhibit P10	A TRUE COPY OF THE ORDER IN I.A. NO. 2/2024 IN F.D.A. NO. 318/2019 DATED 26-11-2024 BEFORE THE ADDITIONAL SUB JUDGE-III, ERNAKULAM