

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**WEDNESDAY, THE 19TH MARCH 2008 / 29TH PHALGUNA 1929**

**AS.No. 527 of 1990(P)& CROSS OBJECTION**

**OS.49/1984 of 1ST ADDL.SUB COURT, KOZHIKODE**

**APPELLANTS:DEFENDANTS 2 & 36 TO 43 IN OS:**

1. OTHAYOTH KOZHIKKAVIL KRISHNAN NAIR,  
AGED 61, S/O.LAKSHMI AMMA, PALATHU AMSOM DESOM,  
PALATHU AMSOM DESOM, KOZHIKODE TALUK.
2. KIZHAKKEDATH MALU AMMA, RESIDING AT ..DO..DO....
3. KIZHAKKEDATH VISWANATHAN NAIR, ..DO..DO.....
4. KIZHAKKEDATH RAMACHANDRAN NAIR, RESIDING  
AT ...DO...DO....
5. KIZHAKKEDATH RAJAGOPALAN NAIR, ..DO..DO....
6. KIZHAKKEDATH VILASINI, RESIDING AT ..DO..DO....
7. KIZHAKKEDTH SANTHAKUMARI, RESIDING AT ..DO..DO...
8. KIZHAKKEDATH BABU,...DO..DO....
9. KIZHAKKEDATH MANOJ (MINOR), (REPRESENTED BY  
NEXT FRIEND, MOTHER AND 2ND APPELLANT,  
MALU AMMA).

**BY ADV. SRI.V.V.SURENDRAN  
SRI.P.M.PADMANABHAN**

**RESPONDENTS: PLAINTIFFS 1 TO 13 IN OS, DEFENDANTS 1,3 TO 35  
AND 44 TO 46 IN O.S.**

1. OTHAYOTH KOZHIKKAVIL KUMARAN NAIR,  
S/O.MADHAVI AMMA, RESIDING AT KOLLAMKODE  
AMSOM DESOM, WYNAD TALUK.

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2. PADMANABHAN NAIR, OTHAYOTH KOZHIKKAVIL, S/O.MADHAVI AMMA, KINALUR AMSOM DESOM, QUILANDY TALUK.
  - \*3. OTHAYOTH KOZHIKKAVIL KAMALAKSHI AMMA, D/O.MADHAVI AMMA, ERAVANNUR AMSOM DESOM, QUILANDY TALUK. ( D I E D).
  4. OTHAYOTH KOZHIKKAVIL SOUMINI AMMA, D/O.MADHAVI AMMA, KODIYATHUR AMSOM DESOM, QUILANDY TALUK.
  5. OTHAYOTH KOZHIKKAVIL VISALAKSHI AMMA, D/O. MADHAVI AMMA, KOODATHAYI AMSOM DESOM, QUILANDY TALUK.
  6. OTHAYOTH KOZHIKKAVIL KALLIANI AMMA, D/O. MADHAVI AMMA, RESIDING AT ULLERI AMSOM DESOM, KOZHIKODE DISTRICT.
  7. OTHAYOTH KOZHIKKAVIL PUSHPAVALLI, D/O.SOUMINI AMMA, RESIDING AT KODIYATHUR AMSOM DESOM, QUILANDY TALUK, KOZHIKODE DISTRICT.
  8. OTHAYOTH KOZHIKKAVIL BALAMANI, D/O.SOUMINI, RESIDING AT ..DO..DO....
  9. OTHAYOTH KOZHIKKAVIL SANTHAKUMARI, D/O.SOUMINI, ...DO....DO.....
  10. MANOJ, S/O.SOUMINI, RESIDING AT ...DO..DO....
  11. SUMATHI (MINOR) RESIDING AT KOODATHAYI AMSOM DESOM, QUILANDY TALUK, KOZHIKODE DISTRICT.
  12. SURESH (MINOR), RESIDING AT ...DO...DO....
  13. SUNITHA (MINOR) ...DO...DO....
- (MINOR RESPONDENTS 11 TO 13 REPRESENTED BY THEIR NEXT FRIEND, MOTHER 5TH RESPONDENT HEREIN)
- \*\*14. OTHAYOTH KOZHIKKAVIL KARUNAKARAN NAIR, S/O.LAKSHMI AMMA, KOZHIKODE ( D I E D)-ADDL.R51 TO 57 ARE IMPEADED:

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15. OTHAYOTH KOZHIKKAVIL KARTHIYANI AMMA,  
D/O. MALU AMMA, CHEEKILODU AMSOM DESOM,  
KOZHIKODE DISTRICT.
16. OTHAYOTH KOZHIKKAVIL MOHANDAS,  
S/O. KARTHIYANI AMMA, RESIDING AT ..DO..DO...
17. OTHAYOTH KOZHIKKAVIL DINESH KUMAR,  
S/O. KARTHIYANI AMMA, ...DO...DO....
18. OTHAYOTH KOZHIKKAVIL SASIKUMAR,  
...DO...DO....
19. OTHAYOTH KOZHIKKAVIL MADHAVAN NAIR,  
S/O.AMMU AMMA, RESIDING AT POYILUR AMSOM DESOM,  
KOZHIKODE DISTRICT.
20. OTHAYOTH KOZHIKKAVIL ACHUTHAN NAIR,  
S/O.AMMU AMMA, PUTHUR AMSOM DESOM,  
KOZHIKODE DISTRICT.
- \*\*\*21. OTHAYOTH KOZHIKKAVIL KUNHIMALU AMMA,  
D/O...DO....RESIDING AT ..DO..DO..... (DIED)
22. OTHAYOTH KOZHIKKAVIL JANU AMMA,  
D/O.AMMU AMMA, RESIDING AT ..DO..DO..
23. OTHAYOTH KOZHIKKAVIL RAGHAVAN NAIR, ..DO..DO....
24. OTHAYOTH KOZHIKKAVIL PRABHAKARAN,  
S/O.KUNHIMALU AMMA, RESIDING AT KARATHUR AMSOM DESOM,  
KOZHIKODE DISTRICT.
25. OTHAYOTH KOZHIKKAVIL VASANTHA,  
D/O....DO... RESIDING AT ..DO..DO...
26. OTHAYOTH KOZHIKKAVIL VASANTHA,  
D/O...DO.... RESIDING AT ..DO..DO....
27. OTHAYOTH KOZHIKKAVIL VALSALA,  
D/O..DO.... RESIDING AT ...DO..DO....
28. OTHAYOTH KOZHIKKAVIL SADANANDAN,  
S/O...DO.... RESIDING AT ..DO..DO...

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29. OTHAYOTH KOZHIKKAVIL SUDHAKARAN,  
S/O.JANU AMMA, RESIDING AT ERAVANNUR AMSOM DESOM,  
QUILANDY TALUK, KOZHIKODE DISTRICT.
30. OTHAYOTH KOZHIKKAVIL VELAYUDHAN,  
S/O..DO... RESIDING AT ..DO..DO....
31. OTHAYOTH KOZHIKKAVIL JAYANANDAN,  
S/O...DO.... RESIDING AT ..DO..DO....
- \*\*\*\*32. KUZHIMAL GOPALAN NAIR, PALATH AMSOM DESOM,  
KOZHIKODE TALUK. (D I E D).(ADDL.R58 TO R66 ARE  
IMPLEADED)
33. KUZHIMAL DEVAYANI AMMA, KOOTHALI AMSOM DESOM,  
QUILANDY TALUK.
34. KUZHIMAL RUGMINI AMMA,  
ERAVANNUR AMSOM DESOM,QUILANDY TALUK,  
KOZHIKODE.
35. NELLOLI PADINHATTU VASU NAIR ( D I E D).
36. ANGATHIL MADHAVIKUTTY AMMA,  
KOTTULI AMSOM DESOM, KOZHIKODE DISTRICT.
37. ANGATHIL PADMANABHAN NAIR,  
VELAYANADU AMSOM DESOM, QUILANDY TALUK.
38. ANGATHIL BALAKRISHNAN NAIR, ..DO..DO....
39. ANGATHIL DEVAKI AMMA,  
KOTTULI AMSOM DESOM, KOZHIKODE.
40. ANGATHIL GANGADHARAN NAIR,  
VALAYANAD AMSOM DESOM, QUILANDY.
41. ANGATHIL KAMALAM, NELLICODE AMSOM DESOM,  
KOZHIKODE.
42. KUNNATHU KALLIANI AMMA,  
CHULLOOR AMSOM DESOM, KOZHIKODE.
43. KUNNATH RADHAMMA, ....DO...DO....
44. KUNNATHU BHASKARAN NAIR,  
PODATH AMSOM DESOM, KOZHIKODE TALUK AND DISTRICT.

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45. KUNNATH BALAMANI AMMA,  
KOOTHALI AMSOM DESOM,  
KOZHIKODE.
46. KUNNATHU HARIDAS,  
ERAVANNOOR AMSOM DESOM, QUILANDY TALUK.
47. KUNNATHU KOMALAVALLY,  
VADAYANNUR AMSOM DESOM, BADAGARA TALUK.
48. PUSHPA, NELLOLI PADINHATTU,  
ERAVANNUR AMSOM DESOM, QUILANDY TALUK.
49. SURESHAN, S/O.NELLOLI PADINHATTU VASU NAIR,  
ERAVANNUR AMSOM DESOM, QUILANDY TALUK (MINOR).
50. MANI, S/O. NELLOLI PADINHATTU VASU NAIR,  
EREAVANNUR AMSOM DESOM, QUILANDY TALUK (MINOR)

(MINOR RESPONDENTS 49 & 50 ARE REPRESENTED BY THEIR  
NEXT FRIEND AND GUARDIAN 48TH RESPONDENT HEREIN)

\* THE RESPONDENTS 1, 2, 4, 5 & 6 ARE RECORDED AS THE  
LEGAL HEIRS OF THE DECEASED R3 VIDE ORDER DTD.  
2/07/99 ON MEMO C.F.7373/99.

**\*\*ADDL.R51 TO R57 ARE IMPEADED:**

- R51. DEVAYANI AMMA, W/O.KARUNAKARAN NAIR,  
RESIDING AT KOZHIKKAVIL HOUSE, PALATH P.O.,  
KAKKODI VIA.
- R52. PARVATHY, D/O. KARUNAKARAN NAIR, ..DO..DO...
- R53. NIRMALA, D/O. KARUNAKRAN NAIR, ...DO...DO...
- R54. PURUSHOTHAMAN, S/O. KARUNAKARAN NAIR,..DO..DO...
- R55. CHANDRAN, S/O.KARUNAKRAN NAIR,...DO...DO....
- R56. BABU, S/O.KARUNAKARAN NAIR, ...DO...DO....
- R57. MANOJ, S/O. KARUNAKARAN NAIR, ..DO..DO....

**\*\*THE ABOVE ADDL.R51 TO R57 ARE IMPEADED AS THE LEGAL  
REPRESENTATIVES OF THE DECEASED R14 VIDE ORDER DTD.  
3/11/04 ON C.M.P.NO.3046/99**

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**\*\*\* RESPONDENTS 24,25,26,27 & 28 ARE RECORDED AS  
THE LEGAL REPRESENTATIVES OF THE DECEASED R21  
VIDE RDER DTD. 2/07/99 ON MEMO C.F.NO.7373/99.**

**\*\*\*\*ADDL.R58 TO R66 ARE IMPEADED:**

- R58. VISALAKSHY AMMA, W/O.GOPALAN NAIR,  
AMBIDIMUKKALI HOUSE, ERAVANNUR P.O., NARIKONI.**
- R59. RAJINI, D/O.GOPALAN NAIR, ..DO..DO....**
- R60. AMO;,I,AR. S/O.GOPALAN NAIR, ..DO..DO....**
- R61. MINI, D/O.GOPALAN NAIR, ...DO...DO....**
- R62. VINODKUMAR, S/O.GOPALAN NAIR, ..DO..DO...**
- R63. SREEJAYA, D/O.GOPALAN NAIR, ..DO..DO....**
- R64. AJESHKUMAR, S/O.GOPALAN NAIR, ..DO...DO....**
- R65. SAJITH KUMAR, S/O.GOPALAN NAIR, ..DO..DO...**
- R66. SANTHOSH, S/O.GOPALAN NAIR, ....DO..DO....**

**\*\*\*\*THE ABOVE ADDL.RESPONDENTS R58 TO R66 ARE  
IMPEADED AS THE LEGAL HEIRS OF THE DECEASED  
R32 VIDE ORDER DTD. 2/07/99 ON C.M.P.NO.3049/99.**

**R1 TO R13 BY ADV. SRI.M.C.SEN (SR.)  
R15 TO R18 BY ADV.SRI.SREELAL N.WARRIER  
R32,R58 TO R66 BY ADV.SRI.THOMAS ANTONY KALLANPALLY  
BY ADV.SRI.K.M.JAMALUDHEEN  
SRI.AVM.SALAHUDIN  
R29,R30 & R31( BY ADV.SRI.R.SUDHISH  
( SRI.P.P.BALAN**

**THIS APPEAL SUITS AND CROSS OBJECTION HAVING BEEN  
FINALLY HEARD ON 19/03/2008, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:**

**ORDER ON C.M.P.NOS.5473/1990 & 2676/2001 IN A.S.NO.527/1990**

**DISMISSED**

**19/03/2008**

**SD/-K.PADMANABHAN NAIR, JUDGE**

**/TRUE COPY/**

*KSS*

**K.PADMANABHAN NAIR, J.**

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**A.S.NO.527 OF 1990 &  
CROSS OBJECTION**  
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**DATED THIS THE 19TH DAY OF MARCH, 2008**

**J U D G M E N T**

Today also counsel for the appellant as well as the respondents pray for further time. The first respondent in the appeal died as early as on 14.2.2006. The counsel who was appearing for the first respondent filed a memo stating the date of death and also the names of the legal representatives of the first respondent on 25.7.2006. Till date, no steps have been taken to implead the legal representatives of the deceased first respondent. So, the appeal so far as it relates to the first respondent abated. Since the suit is one for partition, no relief can be granted to the appellant without the legal representatives of the deceased first respondent in the party array. So, the appeal is disposed of as abated against the first respondent and dismissed for non-prosecution as against the other respondents. The 32<sup>nd</sup> respondent had filed a cross objection with a petition to condone the delay. In the delay petition also, the cross appellant

has not taken steps to effect service of notice to respondents 28 to 32, 37, 41, 43 to 55, 57 and 58 till date . So the delay petition is also dismissed for non-prosecution. In view of the dismissal of the delay petition, the cross appeal is dismissed as time barred.

**K.PADMANABHAN NAIR, JUDGE.**

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