

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 3RD APRIL 2003 / 13TH CHAITHRA, 1925

CMA.No. 19 of 2003()

AGAINST THE ORDER DATED 20/12/2002 IN OS.42/2002 IN
IA.367/2002 of ADL.SUB COURT, THALASSERY

APPELLANT: PETITIONER

SAMINA NASREN HASSAN, W/O. SYED MARAJUL
HASSAN, AGED 31 YEARS, BUSINESS, R/ANO.4,WALKER
LANE,LANGFORD TOWN,BANGALORE-25, REP. THROUGH
POWER OF ATTORNEY HOLDER SHYAM KUMAR,
S/O. P.MUKUNDAN, AGED 30 YEARS, NO OCCPATION, R/A
IN VEENA VIHAR, CHALAD AMSOM DESOM, KANNUR TALUK

BY ADV. SRI.V.RAMKUMAR NAMBIAR

RESPONDENTS: RESPONDENT

SMT. C.SUBHA, D/O. KRISHNAN NAIR,
AGED 34 YEARS, NO OCCUPATION, RESIDING AT
PINARAYI AMSOM DESOM, THALASSERY TALUK.

BY ADV. SR.I.E.V.NAYANAR
SMT.VIDHYA. A.C

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD
ON 11/6/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

C.M.A.NO.19 of 2003

Dated this the 11th day of June, 2007

JUDGMENT

Kurian Joseph, J.

This appeal is filed against the order dated 8.1.2003 in I.A. No.1402/2002 in O.S. No.237/2002 on the file of the Sub Court, Palakkad whereby the court refused to continue the interim injunction and dismissed the petition. It is seen from the order that the court below has proceeded on the basis that the suit is one for injunction and that the plaintiffs have not filed any suit for partition. We are afraid that the court below has not properly adverted to the nature of the suit. It is seen from the plaint that the suit is one for partition simplicitor. Therefore, it is not necessary for this court at this stage to go into the various contentions taken by the appellant including the contention based on Section 90 of the Indian Trust Act since the matter, in our view, requires reconsideration.

Accordingly, we set aside the order under challenge and remit the matter to the court below for fresh consideration.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/

**Kurian Joseph &
T.R. Ramachandran Nair, JJ.**

C.M.A.NO.19 of 2003

JUDGMENT

11th day of June, 2007