

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 31ST DAY OF JANUARY 2017/11TH MAGHA, 1938

OP(C).No. 2579 of 2015 (O)

-----  
E.P.NO. 219 IN OS 518/1981 OF PRINCIPAL SUB COURT, PALAKKAD  
-----

PETITIONER(S):

-----

1. RUGMINI,  
W/O. GOPALAN, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, PALAKKAD TALUK.
2. JAGANNIVASAN,  
S/O. GOPALAN, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, PALAKKAD TALUK.
3. SREENIVASAN,  
S/O. GOPALAN, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, PALAKKAD TALUK.
4. HARIDASAN,  
S/O. GOPALAN, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, PALAKKAD TALUK.
5. BHAVADASAN,  
S/O. GOPALAN, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, PALAKKAD TALUK.
6. KALPAKAM,  
D/O. GOPALAN, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, PALAKKAD TALUK.
7. JANAKI,  
W/O. LATE CHAMNNI, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.
8. INDIRA,  
D/O. JANAKI, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.
9. PARTHAN,  
S/O. JANAKI, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.

-----

10. KANNAN ALIAS KANNANKUTTY,  
S/O.JANAKI, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.
11. MURALI,  
S/O.JANAKI, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.
12. PAZHANIMALA,  
H/O. LATE VALSALA, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.
13. SATHEESH,  
S/O. LATE VALSALA, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.
14. SANTHOSH,  
S/O.LATE VALSALA, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI, ALATHUR TALUK.

BY ADVS.SRI.N.SUKUMARAN (SR.)  
SRI.S.SHYAM

RESPONDENT(S) :

-----

1. SUDEVAN,  
S/O. ARUMUGHAN, PUTHANKALATHIL, CHITHALI DESOM,  
KUZHALMANNAM AMSOM, ALATHUR TALUK - 678 702.
2. RAJAMANI,  
W/O. APPU, PZHAMBALAKODU AMSOM DESOM, ALATHUR TALUK.
3. LALITHA,  
W/O. LATE SEKCHARAN, PUTHENKALATHIL, CHITHALI DESOM,  
KUZHALMANNAM AMSOM, ALATHUR TALUK - 678 702.
4. RAMESH,  
S/O. LATE SEKCHARAN, PUTHENKALATHIL, CHITHALI DESOM,  
KUZHALMANNAM AMSOM, ALATHUR TALUK - 678 702.
5. PRAKASAN,  
S/O. LATE SEKCHARAN, PUTHENKALATHIL, CHITHALI DESOM,  
KUZHALMANNAM AMSOM, ALATHUR TALUK - 678 702.
6. BABUVIJAYANATH,  
S/O. SEKCHARAN, PUTHENKALATHIL, CHITHALI DESOM,  
KUZHALMANNAM AMSOM, ALATHUR TALUK - 678 702.

- 
7. SURENDRAN,  
S/O. ARUMUGHAN, PUTHENKALATHIL, CHITHALI DESOM,  
KUZHALMANNAM AMSOM, ALATHUR TALUK - 678 702.
8. PRAKASH,  
S/O. LATE SARAJINI, THUPPALLATHUR, KOTTEKKAD AMSOM,  
PALAKKAD TALUK - 678 732.
9. GEETHA  
D/O. LATE SARAJINI, THUPPALLATHUR,  
KOTTEKKAD AMSOM, PALAKKAD TALUK - 678 732.
10. YESODHA,  
W/O. LATE RAJAN, CHEGOTTIL,  
PIRAYIRI AMSOM, DESOM, PALAKKAD TALUK - 678 019.
11. BABYSUDHA,  
D/O. LATE RAJAN, CHEGOTTIL,  
PIRAYIRI AMSOM, DESOM, PALAKKAD TALUK - 678 019.
12. BIJU,  
S/O. LATE RAJAN, CHEGOTTIL,  
PIRAYIRI AMSOM, DESOM, PALAKKAD TALUK - 678 019.
13. SIROMANI,  
W/O. THANKAPPAN, PUTHEN VEEDU,  
KINASSERY, PALAKKAD TALUK - 678 707.
14. SAJEEV,  
S/O. LATE VALSALA, PUTHEN KALATHIL,  
KUZHALMANNAM AMSOM, CHITHALI DESOM,  
ALATHUR TALUK - 678 702.

R1,R5, R8, & R9 BY ADVS. SRI.BINOY VASUDEVAN  
SRI.R.MANIKANTAN  
SMT.K.J.ANITHA  
R10-R13 BY ADV. SRI.T.K.SANDEEP

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD  
ON 31-01-2017, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

SKG

OP(C) .No. 2579 of 2015 (O)

-----

APPENDIX

PETITIONER(S) ' EXHIBITS

-----

- P1 - TRUE COPY OF THE COMMON JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN A.S. NOS. 756/1997, 863/1998 AND RFA NO. 581/2004 DT. 21.10.2011.
- P2 - TRUE COPY OF E.P. NO. 219/2014 IN O.S. NO. 581/1981 ON THE FILES OF THE SUB COURT, PALAKKAD DT. 26.6.2014.
- P3 - TRUE COPY OF THE OBJECTIONS FILED BY PETITIONERS 1 TO 6 TO EXT. P2 DT. 17.1.2015.
- P4 - TRUE COPY OF THE OBJECTIONS FILED BY PETITIONERS 7 TO 14 TO EXT. P2 DT. 06.3.2015.
- P5 - TRUE COPY OF THE ORDER DT. 27.7.2015 IN EXT. P2.
- P6 - TRUE COPY OF E.A. NO. 446/2015 DT. 12.8.2015 IN EXT.P2.
- P7 - TRUE COPY OF THE STAY PETITION FILED AS E.A. NO. 445/2015 IN EXT. P2.
- P8 - TRUE COPY OF THE ORDER PASSED IN EXT. P2 DT. 26.9.2015 IN EXT. P2.

RESPONDENT(S) ' EXHIBITS

-----

NIL

/TRUE COPY/

P.S. TO JUDGE

SKG

**A. MUHAMED MUSTAQUE, J.**

-----  
**O.P(C). No.2579 of 2015**  
-----

**Dated this the 31<sup>st</sup> day of January, 2017**

**JUDGMENT**

This original petition is arising from E.P. No.219 of 2014 in O.S. No.518 of 1981. It is to be noted that in a proceeding challenging final decree, this Court by Ext.P1 judgment in A.S. No.756 of 1997 and connected matters, found as follows:

*"21. Of course the dispute regarding the identity of the property and also the adjustment of mesne profits and the quantum of mesne profits that is liable to be paid by each of the parties as earlier mentioned can be determined at the execution stage."*

2. Defendants 9 & 10 filed an application for execution pursuant to final decree. It appears that the Court below ordered delivery without identifying the property as mandated by this Court in Ext.P1 judgment. It is challenging these orders, the petitioners approached this Court. The learned counsel for the respondents submits that some of the parties had already taken

delivery.

3. This Court is of the view that the Court below shall consider the matter in the light of directions of this Court in Ext.P1 judgment and to take appropriate steps before delivering any further items. The items already delivered would be subject to such identification to be made by the Execution Court. The Execution Court also shall decide the question relating to the mesne profits as directed by this Court. Accordingly, the impugned order is set aside. The parties shall appear before the Court on 20.02.2017.

The original petition is disposed of.

Sd/-  
**A. MUHAMED MUSTAQUE,**  
**JUDGE.**

sp/02/02/17

//True Copy//

P.A. to Judge