



2024:KER:92719

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

FRIDAY, THE 6TH DAY OF DECEMBER 2024 / 15TH AGRAHAYANA, 1946

RSA NO. 987 OF 2017

AGAINST THE JUDGMENT AND DECREE DATED 07.04.2017 IN AS
NO.34 OF 2016 OF DISTRICT COURT, KASARAGOD ARISING OUT OF
THE JUDGMENT AND DECREE DATED 22.03.2016 IN F.D.I.A IN OS
NO.36 OF 2007 OF PRINCIPAL MUNSIF, KASARAGOD

APPELLANT/APPELLANT/7TH DEFENDANT/7TH RESPONDENT:

T.D.UMMER
AGED 64 YEARS
S/O.T.D.HASSAN, MUSLIM,
LANDHOLDER,
R/AT T D HOUSE,
CHATTANCHAL,
THEKKIL VILLAGE,
P.O.THEKKIL,
KASARGOD.

BY ADVS.
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.SOJAN MICHEAL

RESPONDENTS/RESPONDENTS/PLAINTIFF & DEFENDANTS 1 TO 6 AND 8
/RESPONDENTS 1 TO 6 AND 8:

1 ABDUL SALAM
 AGED 44 YEARS
 S/O.K.M.ABDUL KHADER AND



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UMMAKULSU @ UMMALU,
R/AT ZAMZAM VILLA,
IQBAL ROAD,
POST KOLAVAYAL,
AJANUR VILLAGE,
HOSDURG TALUK,
PIN-671531.

- 2 K.A.MUHAMMED KUNJHI
AGED 67 YEARS
S/O.K.M.ABDUL KHADER AND
UMMAKULSU @ UMMALU,
R/AT CYLON MANSIL,
CHANLIGNAL POST,
HARI PURAM,
PULLUR VILLAGE,
HOSDURG TALUK,
PIN-671531.
- 3 FATHIMA
AGED 65 YEARS
DAUGHTER OF K.M.ABDU KHADER
AND UMMAKULSU @ UMMALU,
R/AT PANAYARA,
CHATANCHAL,
THEKKIL VILLAGE AND POST,
KASARGOD TALUK,
PIN-671541.
- 4 K.A.MOIDEEN KUNJHI
AGED 63 YEARS
SON OF K.M.ABDUL KHADER AND
UMMAKULSU @ UMMALU,
R/AT CYLON MANSIL,
CHANLIGNAL POST,
HARI PURAM,
PULLUR VILLAGE,
HOSDURG TALUK,
PIN-671531.



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- 5 **K.A.MAYAMOONA**
AGED 62 YEARS
DAUGHTER OF K.M.ABDUL KHADER AND
UMMAKULSU @ UMMALU,
WIFE OF ABOOBACKER,
R/AT RAHMANIA MANZIL,
OPP.PADME POLY CLINIC,
NORTH KOTTACHERY,
P.O. KANJHANGAD,
ANANUR VILLAGE,
HOSDURG TALUK,
PIN-671531.

- 6 **AYISHA**
AGED 51 YEARS
DAUGHTER OF K.M.ABDUL KHADER AND
UMMAKULSU @ UMMALU,
WIFE OF MUHAMMED KUNJHI,
R/AT MELAM,
BEVINJA,
P.O.CHENGALA,
KASARGOD TALUK,
PIN-671531.

- 7 **K.A.ZARABI**
AGED 49 YEARS
DAUGHTER OF K.M.ABDUL KHADER AND
UMMAKULSU @ UMMALU,
WIFE OF T.D.UMMER,
R/AT T.D.HOUSE,
CHATANCHAL,
THEKKIL VILLAGE AND POST,
KASARGOD TALUK,
PIN-671541.

- 8 **ABOOBACKER**
AGED 75 YEARS
AGED 75 YEARS,
SON OF ABDUL KHADER,
R/AT THE RAHMANIA MANZIL,
OPP.PADME POLY CLINIC,



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**NORTH KOTTACHERY,
P.O.KANJHANGAD
ANANUR VILLAGE,
HOSDURG TALUK,
PIN-671531.**

BY ADVS.

FOR R1

**SRI.A.BALAGOPALAN
SRI.M.S.IMTHIAZ AHAMMED
SRI.LIJIN JOSEPH
SRI.A.RAJAGOPALAN
SMT.RESHMI GOPALAKRISHNAN
SMT.P.SEENA
SMT.A.S.SHYAMA**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR
ADMISSION ON 06.12.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



JUDGMENT

1. The 7th defendant in the suit for partition is the appellant.

The challenge is against the final decree. As per the preliminary decree, the decree scheduled property was ordered to be divided into 30 equal shares and the plaintiff is entitled to 2/30 shares and the defendant No.7 is entitled to get the balance 28/30 share.
2. The total decree schedule property available for partition is 41.5 cents of land. Admittedly, towards the share of the 1st respondent/plaintiff, 2 cents 238 Square Links in Re-survey No.1/8C is allotted and towards the share of the 7th defendant, 3 cents 300 Square Links in Re-survey No.1/7A and 28 Cents 37 Square Links in Re-survey No.1/8A was allotted. The portion marked as 1/7A and 1/8B is reserved for road and drainage.



3. According to the appellant, the extent reserved for road and drainage would come to 6.86 cents.
4. I heard the learned counsel for the appellant Sri.M.Hari Sharma and the learned counsel for the 1st respondent Sri.Imthiaz Ahammed.
5. The learned counsel for the appellant argued that though the plaintiff is entitled to get only 2/30 share when the road and drainage reserved for access to his property having 2.238 cents, he would be getting more than three times than his share. There is already a road from the southern side of the property to the 7th defendant and hence the 7th defendant is not in need of another road and hence the finding of the First Appellate Court that the road is beneficial to both the parties is incorrect.
6. The learned counsel for the 1st respondent/plaintiff argued



that the road and drainage is reserved for the benefit of both the parties and it is not exclusively allotted to the 1st respondent/plaintiff.

7. On going through the impugned order and the Plan made available before me by the counsels, I find that the 1st respondent/plaintiff is allotted only 2 cents 238 square links exclusively in re-survey No.1/8C. As submitted by the learned counsel for the contesting respondents, the way is not allotted to the share of the 1st respondent/plaintiff. The way is intended for the benefit of both the parties. In the Commission Report also it is specifically stated that the way is reserved for the benefit of both the parties. In such situation it could not be said that on account of the allotment of way having an extent of 6.86 cents the 1st respondent/plaintiff is getting a higher share. Though the



learned counsel for the appellant contended that there is another way from the southern side, on going through the Objection filed by the appellant to the Commission Report, no such contention is seen taken in the objection. No contention is raised stating that the way is exclusively reserved for the 1st respondent/plaintiff. Since the way is reserved for the benefit of both the parties and the same is admitted by the 1st respondent/plaintiff, I do not find any error or illegality in the final decree passed by the Trial Court which is confirmed by the First Appellate Court.

8. Accordingly, this Regular Second Appeal is dismissed.

Sd/-

M.A.ABDUL HAKHIM
JUDGE