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

**PRESENT**

**THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM**

**FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947**

**RSA NO. 484 OF 2024**

**AGAINST THE JUDGMENT DATED 26.03.2024 IN AS NO.2 OF 2016 OF SUB COURT, PAYYANNUR ARISING OUT OF THE JUDGMENT DATED 30.11.2015 IN OS NO.18 OF 2011 OF MUNSIFF COURT, THALIPARAMBA**

**APPELLANT/RESPONDENT NO.1/DEFENDANT NO.1:**

**KOZHUMMAL PUTHIYAPURAYIL PATHUMMA**
**AGED 77 YEARS**
**D/O AMINA UMMA, KOZHUPPATTIL PUTHIYAPURAYIL,**
**CHUZHALI.P.O, CHUZHALI AMSOM, NIDUVALOOR DESOM,**
**TALIPARAMBA TALUK, KANNUR DISTRICT, PIN - 670142**

**BY ADVS.**
**V.T.MADHAVANUNNI**
**V.A.SATHEESH**

**RESPONDENTS/APPELLANT & RESPONDENTS 2 TO 8/PLAINTIFF & DEFEDANNTS 2 TO 8:**

1 **KOZHUPPATTIL PUTHIYAPURAYIL RABIYA,**
**AGED 50 YEARS**
**W/O USSAIN, KOZHUPPATTIL PUTHIYAPURAYIL,**
**CHENGALAYI.P.O, CHENGALAYI AMSOM, PARIPPAYI DESOM,**
**TALIPARAMBA TALUK, KANNUR DISTRICT, PIN – 670 631**

**2 JAFFER**
**AGED 42 YEARS**
**S/O MARIYAM, KOZHUPPATTIL PUTHIYAPURAYIL, TRICHAMBARAM, TALIPARAMBA.P.O, TALIPARAMBA AMSOM, TRICHAMBARAM DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT, PIN – 670 141**

**3 AYISHA**
**AGED 40 YEARS**
**D/O MARIYAM, KOZHUPPATTIL PUTHIYAPURAYIL, TRICHAMBARAM, TALIPARAMBA.P.O, TALIPARAMBA AMSOM, TRICHAMBARAM DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT, PIN – 670 141**

**4 SUHARA**
**AGED 54 YEARS**
**W/O MUSTHAFA, KOZHUPPATTIL PUTHIYAPURAYIL, NIDIYENGA.P.O, NIDIYENGA AMSOM DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT, PIN – 670 631**

**5 SARUMMA**
**AGED 60 YEARS**
**W/O LATE MUHAMMED, NIDIYENGA.P.O, NIDIYENGA AMSOM DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT, PIN – 670 631**

**6 HASAR**
**AGED 42 YEARS**
**S/O LATE MUHAMMED, NIDIYENGA.P.O, NIDIYENGA AMSOM DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT, PIN – 670 631**

**7 HASEEB**
**AGED 39 YEARS**
**S/O LATE MUHAMMED, NIDIYENGA.P.O, NIDIYENGA AMSOM DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT, PIN – 670 631**

**8 ASHIK**
**AGED 34 YEARS**
**S/O LATE MUHAMMED, NIDIYENGA.P.O,**
**NIDIYENGA AMSOM DESOM, TALIPARAMBA TALUK, KANNUR DISTRICT,**
**PIN – 670 631**

**BY ADVS.**
**G.GIREESH**
**MATHEW KURIAKOSE**
**J.KRISHNAKUMAR**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING :**

## JUDGMENT

1. The 1st defendant in a suit for partition is the appellant. The suit was filed by the plaintiff, who is the daughter of one Amina Umma, to partition the plaint schedule property having an extent of 19 ½ cents of land. As per the plaint allegations, on the death of Amina Umma, the property devolved upon her children - the plaintiff, 1st defendant, 4th defendant, late Mariyam (mother of defendants 2 and 3) and late Muhammed (husband of 5th defendant and father of defendants 6 to 8). Since the parties are co-owners, the properties are liable to be partitioned among them.

2. The 1st defendant contested the suit by filing a Written Statement contending, *inter alia,* that the plaintiff is not the sister of the 1st defendant. The plaint schedule property is not

identifiable. The 1st defendant obtained Ext.B4 Purchase Certificate with respect to the plaint schedule property.

3. The Trial Court dismissed the suit finding that the plaint schedule property belonged to the 1st defendant as per Ext.B4 purchase certificate.

4. The plaintiff filed the appeal before the First Appellate Court, the First Appellate Court allowed the appeal, setting aside the judgment and decree of the Trial Court and decree in the suit and passing a Preliminary Decree for partition holding that the Ext. B4 Purchase Certificate is not binding the other parties in the suit, since it was obtained without notice to them.

5. I heard the learned counsel for the appellant Adv.Sri.Madhavanunni V.T.

6. The learned counsel for the appellant contended that the 1st defendant has been in exclusive possession of the plaint

schedule property on the strength of Ext.B4 Purchase Certificate. When Ext.B4 Purchase Certificate was issued in favour of the 1st defendant its a conclusive proof of earlier tenancy in her favour and the title of the 1st defendant in view of the Section 72(K) of the Kerala Land Reforms Act. The Land Tribunal issued Ext. B4 Purchase Certificate as per Ext. B3 proceedings in which the right of tenancy of the 1st defendant was considered and a finding is entered that there is oral Kuzhikkanam in favour of the 1st defendant and on account of the fixity of the tenancy Purchase Certificate was granted to her.

7. I have considered the contentions raised by the learned counsel for the appellant.

8. It is seen from the impugned judgment that the defendant raised three contentions opposing the prayer for partition. First is that the plaintiff is not the sister of the 1st defendant.

Second is that the plaint schedule property is not identifiable. Third is that the 1st defendant is the title holder. Even though the 1st defendant contended in the Written Statement that the plaintiff is not the sister of the 1st defendant, it is not stated that the plaintiff is not the daughter of Amina Umma and the other siblings are not the sisters and brothers of the 1st defendant. The plaintiff produced documents to show that she is the daughter of Amina Umma, and the Trial Court found that she is the daughter of Amina Umma. At the appellate stage, in view of the evidence, the 1st defendant did not press the first contention. The second contention is with regard to the identity of the plaint schedule property. In the written statement, the defendant also claimed title over the very same plaint schedule property having an extent of 19 ½ cents of land in R.S.A. No. 22/6. In such a case, there could not be any dispute with respect to the identity of the

plaint schedule property. Lastly, the contention of the 1st defendant is the title on the strength of the Ext.B4 Purchase Certificate.

9. Admittedly, on the death of Amina Umma, the 1st defendant is one of the legal heirs along with the other parties in the suit. Ext.B4 Purchase Certificate was issued on the basis of Ext.B3 proceedings. From Ext.B3 proceedings, it is seen that the documents relied on by the 1st defendant to obtain Patta are the title documents of Amina Umma. It would show that the 1st defendant is not having any independent right over the property, apart from the rights of Amina Umma. The 1st defendant obtained the Ext.B4 Purchase Certificate without notice to the other co-owners of the plaint schedule properties. In view of the said fact, Ext.B4 Purchase Certificate is not binding on the other co-owners also. In view of the withdrawal of the first contention, the 1st defendant is

also one of the co-owners of the plaint schedule property. It is well settled by the decision of this Court in **Vannathi Valappil Janaki and others v. Puthiya Purayil Paru and others (1986 KHC 505)**, that when a co-owner obtains Purchase Certificate, it shall enure the benefit of all the other co-owners. The First Appellate Court correctly appreciated the pleadings and evidence in the matter and arrived at the right conclusion. I do not find any ground or reason to interfere. No substantial question of law arises in the matter. Accordingly, the Regular Second Appeal is dismissed.

**Sd/-**

**M.A.ABDUL HAKHIM**
**JUDGE**

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