

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

C.R.P.No.157 of 2012(C)

[AGAINST THE ORDER IN O.P.No.7/2011 of SUB COURT, MUVATTUPUZHA DATED
28.02.2012]

REVISION PETITIONER/RESPONDENT:

DR.THOMAS MAR ATHANACIOUS,
S/O.FR.YOHANNAN, AGED 60, DIOCESAN METROPOLITAN,
KANDANADU DIOCESE EAST, BISHOP HOUSE, MUVATTUPUZHA.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.ANEESH JAMES
SRI.M.A.MOHAMMED SIRAJ

RESPONDENTS/PETITIONERS:

1. YAKOBAYA SURIYANI CHURCH, KANDANADU DIOCESE,
REPRESENTED BY DIOCESAN METROPOLITAN,
DR.MATHEW MAR EVANIOS, S/O.LATE ABRAHAM, AGED 56 YEARS
METROPOLITAN OF KANDANADU DIOCESE, KADAKKANAD P.O.
MAZHUVANNUR VILLAGE, KUNNATHUNAD TALUK
ERNAKULAM DISTRICT.
2. V.REV.THOMAS PANICHAYIL COR EPISCOPA,
S/O.LATE ULAHANNAN SCARIA, AGED 78 YEARS
DIOCESAN SECRETARY, KANDANADU DIOCESE, KADAKKANAD P.O.
MAZHUVANNUR VILLAGE, KUNNATHUNAD TALUK
ERNAKULAM DISTRICT.
3. K.A.THOMAS, S/O.LATE ABRAHAM,
AGED 71 YEARS, KAROOTHU PUTHENPURA, PALAKKUZHA P.O.

BY ADV. SMT.A.A.GEETHA FOR R1
SRI.K.V.SOHAN FOR R1

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
31.07.2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PtK/

B. KEMAL PASHA, J.

.....
C.R.P. No.157 of 2012
.....

Dated this the 31st day of July, 2015

ORDER

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Heard learned Senior Counsel for the petitioner and the learned counsel for the respondents.

2. What is under challenge is the order passed by the court below granting leave to the respondents to sue under Section 92 CPC.

3. According to the learned Senior Counsel for the petitioner, this is not a suit squarely falling under any of the provisions of Section 92 CPC and, therefore, the court below ought not to have granted leave.

4. *Per contra*, learned counsel for the respondents has argued that the relief sought for is squarely falling within the provisions of Section 92 CPC and, therefore, there is nothing wrong in granting the leave.

5. It seems from the impugned order that the impugned order is not a speaking order at all. The court below has not

addressed all the questions raised in the application. It seems that the leave has been granted without hearing the petitioner herein, who is the defendant. Of course, in all cases, it may not be necessary to hear the defendant for granting leave. Even without hearing the defendant, leave can be granted. At the same time, the Apex court has repeatedly held that it is desirable to hear the defendant also.

6. Whatever it is, presently, both the parties are here. The court below has to hear the parties afresh and pass a speaking order by appreciating and adverting to the arguments of both sides, for which the matter has to be remitted back.

In the result, this C.R.P. is allowed to the above extent and the impugned order is set aside. Matter is remitted to the court below for fresh disposal, in accordance with law, after hearing both sides.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/31/07

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PA to Judge