

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

CRP.No. 556 of 2013 ()

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AGAINST THE ORDER DATED 12-6-2013 IN IA NO. 215/2013 IN OS NO. 107/2012
OF MUNSIFF'S COURT, KOYILANDY
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REVISION PETITIONERS/PLAINTIFFS IN THE SUIT :

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1. K.P RAJAN,
S/O. SANKARAN, AGED 56 YEARS
VYDIAR, POOKKOTTERI HOUSE
ULLIYERI DESOM, KOYILANDY TLAUK
PIN – 673 323.
 2. ANISH KUMAR P.S.,
S/O. PUSHPAVALLI, PUSHPA HOUSE, NUT STREET
VATAKARA DESOM, VATAKARA TALUK, PIN-

BY ADVS.SRI.SURESH SIVAPURAM
SRI.K.V.JAYADEEP MENON
SRI.T.PRAMESH (THENGUMPILLIL)
SMT.P.KRISHNAPRIYA

RESPONDENTS/DEFENDANTS IN THE SUIT :

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1. ASHOKAN,
S/O. CHOYI, AGED 49 YEARS
KODOLIKANDY MEETHEL HOUSE, ULLIYERI
KOYILANDY TALUK, KOZHIKODE, PIN – 673 323.
 2. VELAYUDHAN,
S/O. CHANGARAN, AGED 50 YEARS
EDAVALATH KUZHIYIL HOUSE, ULLIYERI
KOYILANDY TALUK, KOZHIKODE, PIN- 673 323.
 3. P.P. BALAN,
S/O. KANARAN, AGED 60 YEARS
PANACHI PARAMBATH HOUSE, ULLIYERI
KOYILANDY TALUK, KOZHIKODE, PIN- 673 323.
 4. RAMAKRISHNAN,
S/O. GOPALAN NAMBIAR, AGED 40 YEARS
KODOLIKANDY HOUSE, ULLIYERI, KOYILANDY TALUK,
KOZHIKODE, PIN - 673 323.

5. OTHAYOTH BABU,
S/O. NARAYANAN, AGE NOT KNOWN
KODOLIKANDY HOUSE, ULLIYERI, KOYILANDY TALUK,
KOZHIKODE, PIN - 673 323.
6. KARUNAKARAN NAIR,
S/O. KALLIANI AMMA, AGED 62 YEARS
PULIKKOOL HOUSE, ULLIYERI, KOYILANDY TALUK,
KOZHIKODE, PIN - 673 323.
7. RAJAN,
S/O. GOVINDAN NAIR, AGED 45 YEARS
MUSHNAMKANDY HOUSE, ULLIYERI
KOYILANDY TALUK, KOZHIKODE, PIN- 673 323.
8. THANIKKAL NARAYANAN,
S/O. KELAN, AGED 70 YEARS, THANIKKAL, ULLIYERI
KOYILANDY TALUK, KOZHIKODE, PIN - 673 323.
9. UNNI NAIR,
S/O. CHANDU NAIR, AGED 65 YEARS
PALLIYORACHALLIL HOUSE, ULLIYERI
KOYILANDY TALUK, KOZHIKODE, PIN – 673323.
10. KODOLIKANDY BABU,
S/O. DAMODARAN NAMBIAR, AGED 40 YEARS
ULLIYERI, KOYILANDY TALUK, KOZHIKODE
PIN – 673 323.
11. VASU NAIR,
S/O. AMMALU AMMA, AGED 49 YEARS
KOLOTHOLI HOUSE, ULLIYERI, KOYILANDY TALUK
KOZHIKODE, PIN - 673 323.
12. UNNIKRISHNAN,
S/O. NARAYANAN NAIR, AGED 45 YEARS
MEETHALE PULIKKOOL HOUSE, ULLIYERI
KOYILANDY TALUK, KOZHIKODE, PIN – 673 323.
13. THAZHE MAPPURATH BABU,
S/O. CHANDRASEKHARAN NAIR, AGED 48 YEARS
MEETHALE PULIKKOOL HOUSE, ULLIYERI,
KOYILANDY TALUK, KOZHIKODE, PIN- 673 323.
14. ROOPESH,
S/O. NARAYANAN NAIR, AGED 38 YEARS
KUTTIYERIPATTA HOUSE, ULLIYERI, KOYILANDY TALUK,
KOZHIKODE, PIN - 673 323.

15. E.P VINOD,
S/O. KANARAN, AGED 35 YEARS
EENTHOTTU HOUSE, ULLIYERI, KOYILANDY TALUK,
KOZHIKODE, PIN – 673 323.

16. BIJU,
S/O. BHASKARAN, AGED 35 YEARS
THIYAKANDY HOUSE, NARATH, ULLIYERI,
KOYILANDY TALUK, KOZHIKODE, PIN- 673 323

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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B.KEMAL PASHA, J.

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C.R.P.No.556 of 2013

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Dated this the 3rd day of July, 2015

ORDER

Two trustees of a private trust filed O.S.No.107 of 2012 before the court below. There is a temple in the property being managed by the private trust. When the respondents attempted to interfere with the administration and management of the temple under the guise of “Kshethra Paripalana Committee”, the petitioners filed a suit seeking the decree of perpetual injunction. There were other litigations also in respect of the property. All those litigations came to an end. The petitioners could not make mention of the details with regard to those decrees in the plaint. As they apprehended that they would fail in the suit because of such formal defects, they filed I.A.No.215 of 2013 to withdraw from the suit with an opportunity to file a fresh suit

on the same subject matter, as per Order 23 Rule 1 (3) CPC.

2. The respondents resisted the said I.A. by contending that the formal defects allegedly occurred have not been disclosed by the petitioners. Through the impugned order, the court below has held that the ground that the details of the earlier suit could not be disclosed on account of lack of proper advice, is the only ground mentioned in the I.A. and no other reasons are mentioned. The question to be considered in the matter is whether the same constitute 'formal defect' within the meaning of Order 23 Rule 1(3) CPC. When there were earlier litigations with regard to the suit and decrees are there directly concerning the suit property, the nondisclosure of such material facts are no doubt material defects within the meaning of Order 23 Rule 1 (3). There is no reason for the court below to dismiss the I.A. At the time when the I.A. was considered, the court below ought to have considered the *locus standi* of

the respondents also in the matter. When the petitioners have claimed their right over the property in their capacity as trustees of a private trust, the court below ought to have seriously considered the said I.A. After all, it is a simple suit for injunction. When the petitioners have highlighted the aforesaid formal defects and sought for the withdrawal of the said suit with leave to file a fresh suit, the court below ought to have allowed the said I.A. The dismissal of the I.A. through the impugned order has resulted in substantial miscarriage of justice and therefore, the said order is liable to be set aside.

In the result, the C.R.P. is allowed and the impugned order is set aside. I.A.No.215 of 2013 in O.S.No.107 of 2012 stands allowed and the petitioners are permitted to withdraw from the suit with liberty to file a fresh suit on the same subject matter under Order 23 Rule 1(3) CPC.

Sd/-

B.KEMAL PASHA
JUDGE