

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

OP(C).No. 1024 of 2013 (O)

I.A.NO.325/2008 IN O.S.NO.56/81 OF SUB COURT, KOCHI

PETITIONER(S) :

SUJAN THOMAS, AGED 57 YEARS,  
S/O.JUSSE JOSEPH, KATTASSERIL HOUSE,  
OCHANTHURUTHU P.O., PUTHUVAIPU VILLAGE, KOCHI TALUK, PIN- 682 508.

BY ADV. SMT.P.VKOCHUTHRESIA

RESPONDENT(S) :

1. MINI MABLE @ MINI, AGED 55 YEARS,  
D/O.ANTHAPPAN, CHERIYAKAKRASSERY HOUSE, OCHANTHURUTH,  
ELAMKUNNAPUZHA, KOCHI.
2. JOSEPH HILARI, AGED 58 YEARS,  
S/O.BABY, CHERIYAKAKRASSERY HOUSE, OCHANTHURUTH,  
ELAMKUNNAPUZHA, KOCHI.
- \* 3. PONNAPPAN, AGED 66 YEARS,  
S/O.PETER, KANAKASSERIL HOUSE, OCHANTHURUTH,  
ELAMKUNNAPUZHA, KOCHI.(DELETED)
4. M.J.GEORGE,  
S/O.JOSEPH, MANAYIL HOUSE, NIRAVATHUPARAMBU,  
EDAPPALLY P.O., KOCHI, PIN- 682 525.
- \* 5. ELSY,  
W/O.APPACHAN, NEDIYACHIRA VEEDU, CHERIYAKADAVU,  
KANNAMALI P.O., KOCHI-8.(DELETED)
6. KOCHUMARY THILESPER,  
W/O.THILESPER, VELIKAKATHU VEEDU, KUMBALANGI P.O.,  
KOCHI-682 507.
- # 7. CICILY PAPPACHAN,  
W/O.PAPPACHAN, PERUMPILLY VEEDU, KUMBALANGI P.O.,  
KOCHI-682 507.(DEAD)
- \* 8. MONICA JOHN,  
W/O.JOSEPH, @JOHN MANAYIL, KALLIPARAMBU HOUSE,  
CHERIYAKADAVU, KANNAMALI P.O., KOCHI-268 508.(DELETED)

9. VICTORY,  
W/O.LATE JOSEPH, MANAYIL HOUSE, CHERIYAKADAVU,  
KANNAMALY P.O., KOCHI-682 508.
10. M.J.JOSY,  
S/O.LATER JOSEPH, CHERIYAKADAVU, KANNAMALI P.O.,  
KOCHI-682 508.
11. M.J.XAVIER,  
S/O.LATE JOSEPH, MANAYIL HOUSE, CHERIYAKADAVU,  
KANNAMALI P.O., KOCHI-682 508.
12. M.J.MATHEW,  
S/O.LATE JOSEPH, MANAYIL HOUSE, CHERIYAKADAVU,  
KANNAMALI P.O., KOCHI-682 508.
13. STELLA ANCELLAM,  
D/O.LATE JOSEPH, MUTHALIPARAMBU, MATTANCHERY,  
KARIPALAM, KOCHI-682 502.
14. BRIJITH EDWARD,  
D/O.LATE JOSEPH, KODIVEETIL HOUSE, KOOVAPADAM,  
KOCHI-682 502.
15. P.N.THRESSIAMMA,  
W/O.ANTONY, KAIMALATH HOUSE, H.N. 16/131A,  
A.K.XAVIER ROAD, KAZHUTHUMUTTAM, KOCHI-682 505.
16. P.M.KUNJUMARY,  
KUNNATHUSSERY VEEDU, KUNNATHUSSERY LANE,  
PANAMPILLY NAGAR, KOCHI-36.
17. P.M.JOSEPHINE,  
W/O.JOJO, EDEZHATHU HOUSE, KUMBALANGY,  
KOCHI-682 507.
18. K.X.JOSEPH,  
S/O.XAVIER, KATTASSERY HOUSE, OCHANATHURUTHU,  
ELAMKUNNAPUZHA-682 508.
19. KOCHURANI JOY,  
W/O.M.JOY JOSEPH, MANAPARAMBIL HOUSE,  
MACHANTHURUTHU P.O., VADAKKEKARA, NORTH PARAVUR- 683 513.
20. NAINAMMA HENRY,  
W/O.HENRY, KANJIRAMUKKIL HOUSE, 47/408 A,  
PUTHUKALAVATTAM, ELAMAKARA P.O., KOCHI-20.
21. MERO JOY,  
W/O.M.R.JOSEPH, MATTATHIL HOUSE, OCHANATHURUTHU,  
PUTHUVYPU VILLAGE, KOCHI TALUK- NOW RESIDING AT PONETHU ROAD,  
PALLIPARAMBU LANE, KALOOR., KOCHI-17.

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22. PHILOMINA,  
W/O.ROY, PANAKKAPARAMBIL VEEDU, AKKATTU LANE,  
THOTTAKKATTUKARA- 683 101.

23. XAVIER,  
S/O.JOSEPH, KANNANKERY HOUSE, KUMBALANGI VILLAGE,  
KOCHI TALUK- 683 102.

\* RESPONDENTS NO.3,5 & 8 ARE DELETED FROM THE PARTY ARRAY, AT  
THE PETITIONER'S RISK, AS PER ORDER DATED 04.10.2013.

# ADDITIONAL R24 IMPEADED

24. FRANCIS, AGED 50 YEARS,  
S/O.CICILY PAPPACHAN, PUTHENCHAKKALAKKAL HOUSE,  
HOUSE NO.21/212, PERUMPADAPPU, KOCHI- 06.

# ADDITIONAL R24 IMPEADED AS LEGAL REPRESENTATIVE OF DECEASED R7,  
AS PER THE ORDER DATED 28.10.2014 IN I.A.NO.11042/2014.

R1 & R2 BY ADVS. SRI.N.ASHOK KUMAR  
SRI.N.C.SAJITH

R4,R6,R7,R9 TO R14,R15 TO R23 BY ADV. SRI.GEORGIE SIMON  
ADDL. R24 BY ADV. SRI.P.B.PRADEEP

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXHIBIT P1: TRUE COPY OF I.A. 1652/12 OF SUB COURT, KOCHI DATED 19.11.2012**
- EXHIBIT P2: TRUE COPY OF COUNTER AFFIDAVIT OF THE PETITIONER TO EXT. P1. DATED 10.12.2012.**
- EXHIBIT P3: TRUE COPY OF ORDER ON EXT. P1 DATED 18.12.2012.**
- EXHIBIT P4: TRUE COPY OF I.A. 593/09 DATED APRIL 2009.**
- EXHIBIT P5: TRUE COPY OF PETITION DATED 04-03-2013 BY THE PETITIONER.**
- EXHIBIT P6: TRUE COPY OF THE COMMISSION REPORT, SKETCH & VALUATION REPORT DATED 27.05.2011.**
- EXHIBIT P7: TRUE COPY OF THE COUNTER-AFFIDAVIT OF THE PETITIONER TO EXT. P6 DATED 06.07.2011.**

**RESPONDENT(S)' EXHIBITS**  
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**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

**P. BHAVADASAN, J.**

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O.P.(C). No. 1024 of 2013  
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Dated this the 22<sup>nd</sup> day of November, 2014.

**JUDGMENT**

Assailing Ext.P3 order and contending for the position that Exts. P1, P4 and P5 should be directed to be disposed of on merits, the respondent before the court below has come up with this Original Petition.

2. The suit was one for partition and preliminary decree has already been passed and final decree proceedings are going on. While so, defendant No. 26 expired. I.A. 1652 of 2012 was moved by respondents 5, 6 and 7 to record them as the legal heirs of deceased defendant No.26 on the basis of a Will. It may be noticed here that defendant No. 26 had been allotted 5/10 shares. The property due to be allotted to the said defendant had been demarcated by the Commissioner also.

3. Serious objection was taken by the petitioner herein to the above prayer made by the respondents concerned by pointing out that unless the Will is proved and established, they cannot be recorded as legal heirs of deceased defendant No. 26. It is also contended that as the property belonged to the husband of defendant No. 26, an adjudication in this regard is absolutely necessary before they can be recorded as the legal heirs of deceased defendant No. 26.

4. The court below thought it proper to tentatively record them as legal heirs subject to final decision at the time of passing of the final decree. It is the said order that is assailed.

5. Learned counsel appearing for the petitioner pointed out that the court below was not justified in taking short cut in not adjudicating the issue agitated in the petition and postponing it to a later date. According to the learned counsel, an adjudication on the issue whether the

petitioners before the court below are entitled to come on record as the the legal heirs of deceased defendant No.26 ought to have been decided on merits and the order now passed without doing so cannot be sustained. It is also contended that before the other proceedings in pursuance to Exts. P4 and P5 are completed, the court below ought not to have considered the present petition.

6. Learned counsel appearing for the respondents on the other hand contended that no right of the petitioner is affected nor the petitioner is prejudiced by the present order. All that the court below has done is tentatively recorded them as legal heirs of deceased defendant No.26 subject to final adjudication later. None of the apprehensions expressed by the petitioner has any basis or foundation and it was also pointed out that the respondents who are sought to be impleaded are already on the party array in the final decree proceedings. So that it is not as if new persons are being brought in the proceedings and new

rights are being agitated. None of the rights of the petitioner is affected and therefore there are no grounds to interfere with the impugned order.

7. After having heard learned counsel on both sides, and after having perused the records, there seems to be considerable force in the submission made by the learned counsel for the respondents. Of course an adjudication could have been undertaken, but it was unnecessary at this point of time as the court below felt that it could be postponed to a subsequent stage and evidence may have to be taken. All that the court has done is tentatively recorded them as legal heirs subject to the issues that may be thrown up for consideration at a later stage.

8. Of course, if their status as the legal heirs is disputed by a person who is actually interested in the estate of the deceased, then the matter may be different. No final decision has been taken by the court below in this regard and it has safeguarded the interests of all in this

regard. There is no reason as to why the petitioner should feel aggrieved by the order. Going by the order of the court below, it is felt that if the petitioner has any claim in that regard, it will be considered at the appropriate stage. That is sufficient for safeguarding the interests of the petitioner.

The result is that this Original Petition is without merits and it is accordingly dismissed. This will be without prejudice to the right of the petitioner to agitate his rights.

P. BHAVADASAN,  
JUDGE

sb.