

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

OP(C).No. 3752 of 2012 (O)

O.S.NO.459/2005 OF THE MUNSIF COURT, ALUVA

PETITIONER(S) :

1. STEPHEN, AGED 60 YEARS,
S/O.POULO, GOPURATHINKAL, KARAYAMPARAMBU KARA,
KARUKUTTY VILLAGE, ALUVA TALUK.
2. PREM STEPHEN, AGED 31 YEARS,
S/O.STEPHEN, GOPURATHINKAL, KARAYAMPARAMBU KARA,
KARUKUTTY VILLAGE, ALUVA TALUK.
3. THOMAS STEPHEN, AGED 29 YEARS,
S/O.STEPHEN, GOPURATHINKAL, KARAYAMPARAMBU KARA,
KARUKUTTY VILLAGE, ALUVA TALUK.

**BY ADVS.SMT.JEENA JOSEPH
SRI.G.D.PANICKER**

RESPONDENT(S) :

1. JOHNY, AGED 55 YEARS, (DIED)
S/O.POULO, GOPURATHINKAL, KARAYAMPARAMBU KARA,
KARUKUTTY VILLAGE, ALUVA TALUK, PIN-683 576.
2. PHILOMINA, AGED 52 YEARS (W/O.JOHNY),
D/O.DEVASSY, KANNAPPILLY, KARAYAMPARAMBU KARA,
KARUKUTTY VILLAGE, ALUVA TALUK, PIN-683 576.
3. DALIYA, AGED 32 YEARS,
D/O.JOHNY, KARAYAMPARAMBU KARA, KARUKUTTY VILLAGE,
ALUVA TALUK, PIN-683 576.
4. DINESH, AGED 30 YEARS
S/O.JOHNY, KARAYAMPARAMBU KARA, KARUKUTTY VILLAGE
ALUVA TALUK, PIN-683576.

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**5. JOY, AGED 44 YEARS,
S/O.POULO, GOPURATHINKAL, KARAYAMPARAMBU KARA,
KARUKUTTY VILLAGE, ALUVA TALUK, PIN-683 576.**

**R5 BY ADVS. SRI.M.P.ASHOK KUMAR
SRI.S.NANDAGOPAL**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: A TRUE COPY OF THE PLAINT IN O.S.NO.459/2005 FILED BEFORE THE MUNSIFF COURT, ALUVA BY THE PETITIONERS.

EXHIBIT P2: A TRUE COPY OF THE PLAINT IN O.S.NO.433/2007 FILED BEFORE THE MUNSIFF COURT, ALUVA BY THE RESPONDENTS.

EXHIBIT P3: A TRUE COPY OF THE JUDGMENT IN W.P(C).NO.4646/2008 OF THE HON'BLE HIGH COURT OF KERALA.

EXHIBIT P4: A TRUE COPY OF THE AMENDMENT PETITION FILED BY THE RESPONDENTS IN O.S.NO.433/2007.

EXHIBIT P5: A TRUE COPY OF THE PETITION IN I.A.NO.1419/2012 IN O.S.NO. 459/2005 OF MUNSIFF COURT, ALUVA, FILED BY THE PETITIONERS.

EXHIBIT P6: CERTIFIED COPY OF THE ORDER IN I.A.NO.1419/2012 IN O.S.NO.459/2005 OF MUNSIFF COURT, ALUVA DATED 29-09-2012.

EXHIBIT P7: CERTIFIED COPY OF THE JUDGMENT IN O.S.NO.459/2005 OF THE MUNSIFF COURT, ALUVA DATED 29-09-2012.

EXHIBIT P8: CERTIFIED COPY OF THE DECREE IN O.S.NO.459/2005 OF THE MUNSIFF COURT, ALUVA DATED 29-09-2012.

EXHIBIT P9: A TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE 5TH RESPONDENT BEFORE THE ALUVA MUNSIFF COURT IN O.S.NO.169/2013 IN I.A.NO.803/2013 AND 802/2013.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. ABRAHAM MATHEW, J.

O.P.(C)No.3752 of 2012

Dated this the 23rd day of November, 2015

J U D G M E N T

Petitioners are the plaintiffs in OS.459 of 2005 of Munsiff, Aluva. They filed an application for permission to withdraw the suit with liberty to file fresh suit on the same cause of action. By Ext.P6 order, the learned Munsiff has rejected the prayer and by Ext.P7 judgment dismissed the suit. He has passed Ext.P8 decree also. This is challenged.

2. Heard.

3. The legality of the order like the impugned order was challenged in ***Jacob Vs. State Bank of Travancore (1991 (1) KLT 412)***. This court held that the trial court cannot split up the prayers rejecting permission to withdraw the suit with liberty to file fresh suit on the same cause of action and dismissing the suit. It is illegal. The suit should not have been dismissed. So the order is liable to be set aside.

In the result this OP is allowed. Exts.P7 and P8 are

set aside. The learned Munsiff is directed to allow the petitioner to proceed with the trial of the suit.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge