

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

OP(C).No. 53 of 2015 (O)

I.A.NO.1890/2014 IN O.S.NO.139/2014 OF MUNSIF COURT, VATAKARA

**PETITIONER(S)/RESPONDENT IN I.A.NO.1890/2014 & PLAINTIFF IN
O.S.NO.139/2014-MUNSIF COURT, VATAKARA :**

**KALLARAKKAL THAZHE SUBAIR, AGED 39 YEARS,
S/O.MAHAMOOD, RESIDING AT KALLARAKKAL THAZHE,
VATAKARA AMSOM DESOM, VATAKARA BEACH POST,
VATAKARA TALUK, KOZHIKODE DISTRICT, KERALA STATE.**

**BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY**

**RESPONDENT(S)/PETITIONER IN I.A.NO.1890/2014 & DEFENDANT IN
O.S.NO.139/2014-MUNSIF COURT, VATAKARA :**

**THATTACHERI SIDDIQUE, AGED 38 YEARS,
S/O.ABDULLA, RESIDING AT THATTACHERI,
VATAKARA AMSOM DESOM, NUT STREET, VATAKARA TALUK,
KOZHIKODE DISTRICT, KERALA STATE.**

BY ADV. SRI.ZUBAIR PULIKKOOL

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 11-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd

OP(C).No. 53 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE PLAINT O.S.NO.139/2014 BEFORE
THE MUNSIF COURT, VATAKARA.**

**EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT BY THE DEFENDANT IN
O.S.NO.139/2014 BEFORE THE MUNSIF COURT, VATAKARA.**

**EXHIBIT P3: CERTIFIED COPY OF THE PETITION I.A.NO.1890/2014 WITH
THE ORDER THEREON BY MUNSIF, VATAKARA.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

Msd

B.KEMAL PASHA, J.

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O.P.(C). No.53 of 2015

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Dated this the 11th day of June, 2015

J U D G M E N T

In a suit for money, a written statement was filed by raising a contention of non-jointer of necessary parties as the partnership firm was not impleaded. Without deliberating on the question of non-jointer of necessary parties, it seems that the defendant had filed I.A.No.1890 of 2014 allegedly under Order 1 Rule 10 (2) of the Code of Civil Procedure for bringing the partners of the firm into the party array as additional defendants Nos.2 to 7. The said application stood posted for objection on 04.12.2014. On 04.12.2014, the court below passed the following order: "No objection filed. In order to decide matter on merit, I.A. allowed." The

said order is under challenge.

2. Heard Adv.Sri.B.Krishnan, the learned counsel for the petitioner. The plaintiff is the master of the suit. Normally, it is for the plaintiff to decide, as to who are the parties to be brought on record in the suit as parties. In exceptional circumstances, of course, for deciding the real matters in controversy in the suit, it is permissible for the defendant also to move the court under Order 1 Rule 10 (2) of the Code of Civil Procedure. At the same time, the said power can only be sparingly exercised for bringing the third party to the party array at the instance of the defendant.

3. In this particular case, the question of non-jointer was raised. It seems that without deliberating on that question and that whether it was expedient in the interest of justice, to bring on record the third party for settling the matters in controversy, the court below had simply allowed the I.A. without assigning any reason. Even in the absence of objection from the part of the plaintiff, it is for the court below to satisfy itself that there was necessity to bring on

record third parties to the party array, in order to effectually and completely adjudicate and settle the questions involved in the suit. Only on such circumstance, the court can bring on record third parties by invoking the power under Order 1 Rule 10(2) of the Code of Civil Procedure. It seems that the said power has not been exercised by the court below. Matters being so, the said order is liable to be set aside.

In the result, this Original Petition (Civil) is allowed and the order impugned is set aside. I.A. is remitted to the court below for fresh disposal, in accordance with law, after deliberating on the question, as to whether the suit is bad for non-jointer of necessary parties or not.

Sd/-
B.KEMAL PASHA
JUDGE