

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. 190 of 2015 (O)

I.A. NO. 2842/2014 IN OS NO. 462/2006 OF ADDITIONAL MUNSIF COURT, CHERTHALA

ORIGINAL PETITIONER/1ST RESPONDENT/ DEFENDANT :

**DR.T.D.BOSE
S/O.T.K.DHAMODARAN,
AGED 54, PRASANTHI, 12/7 10 A
PANAYAPPALLY P.O., KOCHI -2**

**BY ADVS.SRI.JOY THATTIL ITTOOP
SRI.JACOB TOMLIN VARGHESE
SRI.A.G.ADITYA SHENOY**

RESPONDENTS/PETITIONERS & 3RD RESPONDENT/PLAINTIFF :

- 1. MATT INDIA MEDICAL CENTRE
REG NO.890/98. EZHUPUNNA SOUTH MURI
KODAMTHURUTHU VILLAGE, CHERTHALA - 688 524
REPRESENTED BY ITS DIRECTOR.**
- 2. K.J.CHERIYAN,
KARIKODATHU, KODAMTHURUTHU VILLAGE
CHERTHALA - 688 524**
- 3. ANTONY,
THATTUMKAL,
KODAMTHURUTHU VILLAGE, CHERTHALA - 688 524**
- 4. KUTTIMOOSA, NEENA MANZIL
KUTHIATHODE, THURAVOOR, CHERTHALA - 688 524**
- 5. BALACHANDRAN, EERAYIL HOUSE,
PARAYAKAD P.O., CHERTHALA - 688 524**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 22-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

OP(C).No. 190 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1- TRUE COPY OF THE PLAINT O.S.462/2016 OF THE ADDITIONAL
MUNSIFF, CHERTHALA.
- EXT. P2- TRUE COPY OF THE WRITTEN STATEMENT/COUNTER CLAIM.
- EXT. P3- TRUE COPY OF THE PETITION IN I.A.2842/2014 IN O.S.462/2016 OF THE
ADDITIONAL MUNSIFF, CHERTHALA.
- EXT. P4- TRUE COPY OF THE OBJECTION DATED 3.9.2013.
- EXT. P5- CERTIFIED COPY OF THE ORDER DATED 15.12.2014 IN I.A. 2842/2014 IN
O.S. 462/2016 OF THE ADDITIONAL MUNSIFF, CHERTHALA

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

P.BHAVADASAN, J.

O.P.(C) No. 190 of 2015

Dated this the 22nd day of January, 2015

J U D G M E N T

The grievance is that Ext.P5 order has been passed by the court below without taking note of the statement in the objections filed in I.A.No.2842/2014 in O.S.No. 462/2006 that some of the respondents shown therein are no more.

2. The learned counsel appearing for the respondent before the court below in I.A.No.2842/2014 contended that the court below was of the view that some of the respondents had died long ago and without taking necessary steps in that regard, the petition may not be maintainable. The complaint is that without even considering that aspect, the I.A. has been allowed.

3. The suit is one for injunction. As the consequences of not impleading legal heirs of some of the defendants in the suit passed away during the pendency of the suit, is a matter to be considered by the court at the

appropriate stage. Even assuming that in the petition on hand filed under Order XI Rule 9, assuming that if there are some dead persons, at best what could be said is that the order is not binding on them as to whether it will bind the persons who are alive, is a different question. All these are matters to be decided at the time of trial of the suit.

4. It could not be said that being a suit for injunction, the suit abates as a whole as of now. The fact that the counter claim filed by the defendant does not make much of a difference to the issue.

For the above reasons, reserving the right of the petitioner to agitate the question at the appropriate stage, this petition is disposed of.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge