

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

OP(C).No. 288 of 2015 (O)

**ORDER DTD.12.11.2014 IN IA.NO.2946 OF 2014 IN OS.538/2011 OF MUNSIFF'S COURT,
THIRUVALLA**

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PETITIONER(S)/11TH RESPONDENT/DEFENDANT:

**ABDUL KAREEM, AGED 69 YEARS,
W/O.KHANI RAWATHER, PARACKALVALIYAPARAMBIL HOUSE,
MUTHOOR P.O., THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.K.N.RADHAKRISHNAN(THIRUVALLA)

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 - 10 AND 12 & 13:

- 1. JAMALUDEEN, AGED 62 YEARS,
S/O.KHANI RAWATHER, PARACKAL HOUSE, NANGARKULAGARAMURI,
PALLIPADU VILLAGE, KARTHIKAPALLY TALUK - 690 514.**
- 2. ABDUL MAJEED, AGED 42 YEARS,
S/O.KHASIM KHAN, PAINUMVEEDU, MUTHOOR P.O.,
THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT (DIED) - 689 107.**
- 3. MUHAMMED ASHRAF, AGED 40 YEARS,
S/O.ABDUL MAJEED, PAINUMVEEDU, MUTHOOR P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT - 689 107.**
- 4. ABDUL RASHEED, AGED 38 YEARS,
S/O.MUHAMMED ASHRAF, PAINUMVEEDU, MUTHOOR P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT - 689 107.**
- 5. SOFIYA BEEVI, AGED 36,
D/O.KHASIM KHAN PAINUMVEEDU, MUTHOOR P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT - 689 107.**
- 6. MARIYAMMA BEEVI, AGED 65 YEARS,
ADIYOTTHKIZHAKKETHIL, MUTHOOR P.O., THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT - 689 107.**

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7. NOUSHAD, AGED 45 YEARS,
S/O.MARRIAYAMMA BEEVI, ADIYOTTHKIZHAKKETHIL
MUTHOOR P.O., THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT - 689 107.
8. ANZARI, AGED 42 YEARS,
S/O.NOUSHAD, ADIYITTHKIZHAKKETHIL, MUTHOOR P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT - 689 107.
9. HAREES, AGED 42 YEARS,
B/O.ANSAR, ADIYITTHKIZHAKKETHIL, MUTHOOR P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT - 689 107.
10. SHAKKEELA, AGED 38 YEARS,
SISTER OF HAREES, ADIYITTHKIZHAKKETHIL, MUTHOOR P.O.,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT - 689 107.
11. SOFI, AGED 35 YEARS,
SISTER OF SHAKKEELA, ADIYITTHKIZHAKKETHIL,
MUTHOOR P.O., THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT - 689 107.
12. SAINABA BEEVI, AGED 70 YEARS,
PAINAMOOTTILMALAYIL VEEDU, MUTTOORMURI, THIRUVALLA.
13. FATHIMA BEEVI, AGED 65 YEARS,
MADATHILPARAMBIL VEEDU, NEAR KALLUPALAM, ALAPPUZHA.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 02-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: COPY OF PLAINT IN O.S. 538/2011 OF THE MUNSIFF'S COURT, THIRUVALLA.

EXT.P2: COPY OF THE WRITTEN STATEMENT OF THE 11TH RESPONDENT IN
O.S. 538/2011 OF MUNSIFF'S COURT, THIRUVALLA.

EXT.P3: COPY I.A. 2946/2014 IN O.S. 538/2011 OF MUNSIFF'S COURT, THIRUVALLA.

EXT.P4: COPY OF OBJECTION TO I.A. 2946/2014.

EXT.P5: CERTIFIED COPY OF ORDER COPY I.A. 2946/2014 IN O.S.538/2011 OF
MUNSIFF'S COURT, THIRUVALLA DATED 12/11/2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.BHAVADASAN, J.

O.P.(C) No. 288 of 2015

Dated this the 02nd day of February, 2015

J U D G M E N T

The petitioner is aggrieved by Ext.P5 order whereby the court below has allowed an amendment application.

2. The suit was one for partition. During the pendency of the suit, the plaintiff claimed that he has purchased shares from certain other co-owners and therefore he is entitled to enhance shares. He therefore sought amendment accordingly.

3. The defendant had from the very initial stage pointed out that the plaintiff is not entitled to any share and the suit is only to be dismissed.

4. The grievance is that it was without considering the objections of the respondents that the amendment has been allowed.

5. There can be no dispute regarding the fact that by the amendment now allowed, there is no change in the

nature of suit or the cause of action. Even assuming that the plaintiff did not have a share at the time of institution of the suit, if the transferors of the plaintiffs were entitled to shares, then those shares transferred in the name of the plaintiff may go to him. These are all matters to be looked into at the time of deciding the issue.

Prima facie, it does not appear that any serious prejudice is caused to the petitioner by the amendment now granted. However, if the petitioner is so advised, they may file additional written statement or objections as the case may be, within a period of one month from today which the court below shall receive on record.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge