

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

OP(C).No. 311 of 2015 (O)

AS 131/2013 of ADDL.DISTICT COURT, MAVELIKKARA
IA.NO.2396/2013 IN OS 328/2003 of MUNSIFF COURT, MAVELIKKARA

PETITIONER(S)/PETITIONERS 1 TO 4/PLAINTIFFS:

1. CHELLAMMA, AGED 80 YEARS
KOTTARATHIL VEETIL, KANDIYOOR MURI
MAVELIKKARA VILLAGE, ALAPPUZHA DISTRICT.
2. VIJAYAKUMAR, AGED 56 YEARS
S/O.RAGHAVAN PILLAI, KOTTARATHIL VEETIL
KANDIYOOR MURI, MAVELIKKARA VILLAGE
ALAPPUZHA DISTRICT.
3. VIJAYALEKSHMI @ SUMA, AGED 52 YEARS
D/O.RAGHAVAN PILLAI, MATTAKKATTU VEETIL
PADINJAREVAZHI MURIYIL, CHENNITHALA VILLAGE
MAVELIKKARA, ALAPPUZHA DISTRICT.
4. SHOBANAKUMARI, AGED 49 YEARS
D/O.RAGHAVAN PILLAI, PARVATHI BHAVAN, CHEPPAD VILLAGE
KARTHIKAPPALLY TALUK.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENT(S)/COUNTER PETITIONERS/DEFENDANTS 1 & 3/ADDTIONAL 5TH
PLAINTIFF:

1. PADMAKUMAR, AGED 46 YEARS
S/O.CHELLAPPAN NAIR, KOCHINATH VEETIL
KANDALLOOR VILLAGE, KANDALLOOR VADAKKUM MURI
KARTHIKAPPALLY TALUK-690516.

PJ

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OP(C).No. 311 of 2015 (O)

2. KRISHNANKUTTY, AGED 61 YEARS
S/O.ACHUTHAN, PAVAKKAPARAMBIL VEETIL, KADIYOOR MURI
MAVELIKKARA VILLAGE, ALAPPUZHA DISTRICT, PIN-690 101.
3. MANOJ KUMAR, AGED 34 YEARS
S/O.KRISHNANKUTTY, PAVAKKAPARAMBIL VEETIL
KADIYOOR MURI, MAVELIKKARA VILLAGE, PIN-690 101.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

OP(C).No. 311 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1 :** TRUE COPY OF THE EXTRACT OF THE PLAINT IN OS.NO.328/2003.
- EXT P2 :** TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE POWER OF ATTORNEY HOLDER OF TH 1ST DEFENDANT.
- EXT P3 :** TRUE COPY OF THE ORDER IN IA.NO.2396/2013 IN OS.NO.328/2003.
- EXT P4 :** TRUE COPY OF THE ORDER DATED 30-03-2013 IN OP(SUCCESSION) NO.17/2001.
- EXT P5 :** TRUE COPY OF THE EXTRACT OF THE APPEAL MEMORANDUM IN AS.NO.131/2013.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.BHAVADASAN, J.

O.P.(C) No.311 of 2015

Dated this the 05th day of February, 2015

J U D G M E N T

Under challenge is Ext.P3 order dated 19.11.2013 in I.A.No. 2396/2013 in O.S.No. 328/2003 whereby the court below rejected an application under Section 10 of C.P.C. filed by the petitioner to stay O.S.No. 328/2003.

2. The ground urged for stay was that there was an earlier O.P.(Succession)No. 17/2001 which has been disposed of and against the order in which an appeal as A.S.No. 131/2013 is pending consideration. The contention raised by the petitioner before the court below was that in view of the pendency of the appeal, it may not be proper to go on with the trial of the suit, for, the decision in the O.P. proceedings may have a bearing on the suit.

3. The court below on consideration of the materials before it found that apart from the fact that the parties are different and properties are different and it was also found

that there is nothing in common between the two proceedings and therefore there was no necessity to stay the proceedings and dismissed the petition.

4. The learned counsel assailing the said finding contended that the court below was in error in holding so and it ought have stayed the trial of the suit. In succession proceedings the status of persons are decided and that will have a material bearing on the suit also.

5. Though the argument may look attractive at the first blush, on a closer scrutiny, it came be found to be without any basis. Apart from the fact that the court below has observed that there is nothing in common between the two proceedings, Section 387 of the Indian Succession Act is the complete answer to the contention raised by the learned counsel for the petitioner. Proceedings for the succession certificate is only a summary proceedings and it does not decide finally any issues. Viewed from that angle also the court below was justified in refusing to grant relief under

Section 10 of the C.P.C.

This original petition is without any merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge