

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

OP(C).No. 364 of 2015 (O)

O.S. NO. 306/2010 OF MUNSIFF COURT, DEVIKULAM

PETITIONER:

**SOBHANA AJAYKUMAR, AGED 51 YEARS
W/O.LATE AJAYKUMAR
RESIDING AT IX/339C CHERUKUZHAY HOUSE, ADIMALI P.O.
MANNAMKANDAM VILLAGE, DEVIKULAM TALUK**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

- 1. JAYAKHOSH, AGED 49
S/O.KUTTAPPAN, RESIDING AT CHERUKUZHAY HOUSE
ADIMALI P.O., MANNAMKANDAM VILLAGE, DEVIKULAM TALUK
673 001**
- 2. THANKAMMA, AGED 80
W/O.ACHUTHAN, RESIDING AT KAPPLAAMKUDI HOUSE
KEEZHILLAM, PERUMAVOOR, ERNAKULAM DISTRICT 682021**
- 3. AMMINI, AGED 78
W/O.SIVAN, RESIDING AT PUTHENPURAYIL HOUSE
ADIMALI KARA, MANNAMKANDAM VILLAGE 673001**
- 4. RADHA, AGED 75
D/O.LATE KUTTAPPAN, RESIDING AT CHERUKUZHAY HOUSE
C.V.STORES, ADIMALI, MANNAMKANDAM VILLAGE
673001**
- 5. VALSA, AGED 70
W/O.RAJAN, VAZHATTU HOUSE SENAPATHY P.O., PALLIKUNNU
SANTHANPARA VILLAGE 673001**
- 6. VIJAYAMMA, AGED 53
W/O.SASI, RESIDING AT KUPASSERIL HOUSE, ADIMALI P.O
MANNAMKANDAM VILLAGE, 673001**

DCS

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- 7. SHYLA ASOKAN, AGED 49**
W/O.ASOKAN, RESIDING AT MONADAN HOUSE, ADIMALI
MANNAMKANDAM VILLAGE 673001
- 8. ANJU AJAYKUMAR**
D/O.LATE AJAYKUMAR
RESIDING AT IX/339 C CHERUKUZHAY HOUSE, ADIMALI P.O.
MANNAMKANDAM VILLAGE, DEVIKULAM TALUK
- 9. ARUNKUMAR AJAY**
S/O.LATE AJAYKUMAR
RESIDING AT IX /339 C CHERUKUZHAY HOUSE
ADIMALI P.O., MANNAMKANDAM VILLAGE
DEVIKULAM TALUK 673001

R1 BY ADV.SRI.PADAYATTEE YELDO

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DCS

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF THE PLAINT IN OS. NO.306 OF 2010 DATED 04.12.2010 ON THE FILE OF THE MUSIFF COURT, DEVIKULAM**
- P2: A TRUE COPY OF THE APPLICATION IA. NO.. 130 OF 2015 DATED 04.02.2015 IN EXT P1 SUIT**
- P3: A TRUE COPY OF THE ORDER PASSED BY THE LEARNED MUNSIF IN IA. NO.130 OF 2015 IN OS. NO.306 OF 2010 ON THE FILES OF THE MUNSIF COURT, DEVIKULAM DATED 04.02.2015**

RESPONDENT(S)' EXHIBITS:- NIL

/TRUE COPY/

P.A. TO JUDGE

DCS

V. CHITAMBARESH, J

O.P.(C). NO. 364 OF 2015

Dated this the 24th day of June, 2015

JUDGMENT

The Court below has by the order impugned rejected the application for amendment of the plaint. The suit is one for declaration of title and for consequential injunction.

2. The amendments sought are only to correct the year and date and also to raise a legal plea. Such amendment will not alter the character of the suit or prejudice the defendants in any way.

3. I am satisfied that the plaintiff could not raise the issue before the commencement of trial in spite of due diligence in the circumstances. The delay on the part of the plaintiff can ofcourse be condoned on payment of costs to the defendants. Ext. P3 order is set aside and I.A. No. 130/2015 in O.S. No. 306/2010 on the file of the Court of the Munsiff of Devikulam is allowed. This is

subject to the condition that the plaintiff pays a sum of Rs. 10,000/- as costs to the counsel for the first defendant Adv. Sri. Padayattee Yeldo within a period of two weeks from today.

4. The Court of the Munsiff of Devikulam shall forthwith transmit the records to the Munnar Special Tribunal for further steps. The Registry shall forward a copy of the judgment to the Court of the Munsiff of Devikulam as well as the Munnar Special Tribunal.

The Original Petition is disposed of.

**V. CHITAMBARESH
JUDGE**

DCS

A sum of ₹ 10,000- (Rupees Ten thousand only) has been paid as costs to the learned counsel for the first respondent, Adv. Shri. Padayattee Yeldo within the stipulated time in compliance of the direction in the judgment dated 24.06.2015 in O.P.(C). No. 364/2015, vide memo dated 15.07.2015 bearing cf. no. 5655/2015.

sd/-
Registrar (Judicial)

Order dated 13.11.2015 in R.P. 1025/2015 in O.P.(C). No. 364/2015 is appended with the original order dated 24.06.2015 in O.P.(C). No. 364/2015.

sd/-
Registrar(Judicial)