

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

OP(C).No. 1885 of 2013 (O)

**AGAINST THE ORDER/JUDGMENT IN I.A.NO.25 OF 2013 IN O.S.NO.193 OF 2011 OF THE
SUB COURT, PALA.**

PETITIONERS :

- 1. LAKSHIMUTTY AMMA,
W/O.CHANDRASEKHARAN NAIR,
RESIDING AT 'CHANDRABHAVANAM', NOW AT "POOTHAMANA"
KIDANGOOR P.O., KOTTAYAM DISTRICT.**
- 2. ASHOK KUMAR K.G.,
S/O.GOVINDAN NAIR, RESIDING AT "POOTHAMANA"
KIDANGOOR P.O., KOTTAYAM DISTRICT.**
- 3. RENJITHA,
W/O.ASHOK KUMAR, RESIDING AT "POOTHAMANA"
KIDANGOOR P.O., KOTTAYAM DISTRICT.**

**BY ADVS.SRI.P.P.NARAYANAN
SRI.SHAJI THOMAS
SRI.N.NAGARESH
SRI.BINU PAUL
SRI.T.V.VINU**

RESPONDENT :

**ASHA G.NAIR,
W/O.V.RAJEEV, NOW RESIDING AT SABARIGIRI HOUSE,
PKRA 104, EROOR P.O., ERNAKULAM-682306.**

**R1 BY ADV. SRI.R.SUDHEER
R1 BY ADV. SRI.MOHAN PULIKKAL**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 1885 of 2013 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT-P1: COPY OF PLAINT ON O.S.NO.193/2011 OF SUB COURT, PALA DATED 3.9.2011.

EXHIBIT-P2: COPY OF THE WRITTEN STATEMENT DATED 09.01.2012 FILED BY DEFENDANTS 1 AND 2 IN O.S.NO.193/2011 OF THE SUB COURT, PALA.

EXHIBIT-P3: COPY OF THE AFFIDAVIT AND PETITION DATED 25.6.2012 (I.A.NO.1259/2012) IN O.S.NO.193/2011.

EXHIBIT-P4: COPY OF THE ORDER DATED 25.07.2012 IN I.A.NO.1259/2012 IN O.S.NO.193/2011 OF THE SUB COURT, PALA.

EXHIBIT-P5: COPY OF THE AFFIDAVIT DATED 9.8.2012 FILED BY THE RESPONDENT/PLAINTIFF IN SUPPORT OF I.A.NO.1686/2012 IN O.S.NO.193/2011.

EXHIBIT-P6: COPY OF THE ORDER DATED 24.09.2012 IN I.A.NO.1686/2012 IN O.S.NO.193/2011 OF THE SUB COURT, PALA.

EXHIBIT-P7: COPY OF THE AFFIDAVIT DATED 3.1.2013 ALONG WITH I.A.NO.25/2013 (PETITION FOR AMENDMENT).

EXHIBIT-P8: COPY OF THE ORDER DATED 2.2.2013 IN I.A.NO.25/2013 IN O.S.NO.193/2011 OF THE SUB COURT, PALA.

RESPONDENT'S EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/28/7/15

B.KEMAL PASHA, J.

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O.P.(C).No.1885 of 2013

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Dated this the 23rd day of July, 2015

J U D G M E N T

Exhibit P8 order passed by the court below allowing an amendment to the plaint in O.S.No.193 of 2011 of the court below is under challenge. The defendants have come up with the challenge. The suit was initially filed as one for the decree declaring that document No.2564 of 2010 of the Principal Sub Registry, Kottayam is null and void, non-est and not binding on the plaint schedule properties and the plaintiff. A decree of perpetual injunction was also sought for as a consequential relief. Thereafter, when the plaintiff came to know that subsequent to the execution of document No.2564 of 2010, the 1st defendant had executed a sale

deed as document No.1877 of 2011 with regard to the very same property in favour of the additional 3rd defendant, who is the wife of the 2nd defendant, the plaintiff wanted to implead the additional 3rd defendant and consequently she was impleaded. According to the plaintiff, an amendment was necessitated for getting document No.1877 of 2011 also set aside as a consequential relief to the original relief. Recovery of possession of the property was also sought for. For the same, at first Exhibit P3 amendment application was filed. As it had suffered some technical defects, the same was dismissed as not pressed.

2. Later Exhibit P5 application as I.A.No.1686 of 2012 seeking the very same relief sought for in Exhibit P3 was filed. Through Exhibit P6 order, the court below has found fault with the plaintiff in not incorporating sufficient amendment relating to the valuation, and with liberty to the plaintiff to file a fresh application with correct pleadings, Exhibit P5 was dismissed through Exhibit P6. Subsequently, Exhibit P7 application as I.A.No.25 of 2013 was filed for the

very same relief after incorporating some other pleadings including the amendments relating to the valuation etc. The court below has allowed Exhibit P7 I.A. through Exhibit P8 order which is under challenge.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. According to the learned counsel for the petitioners, the court below ought not to have permitted the plaintiff to prefer such a third application for amendment, especially when the first application filed by the plaintiff for the same was dismissed as not pressed. The learned counsel for the petitioners is relying on the decision in ***Muhammed Master v. Abu Haji*** [1981 KLT 578]; wherein the effect of not pressing a matter before the court below has been discussed. It seems that when a matter is dismissed as not pressed, a second application for the very same relief is not maintainable.

5. The decision in ***Muhammed Master*** (*Supra*) can be distinguished with respect to the facts of this particular case.

It is true that initially Exhibit P3 I.A. happened to be dismissed as not pressed. At the same time, for the said relief another application was filed as Exhibit P5. The said application was entertained by the court below on merits and it was dismissed on merits by the court below through Exhibit P6 order, thereby giving liberty to the plaintiff to file a fresh application by incorporating some other materials also. Consequently, with the permission granted by the court below, another application as Exhibit P7 was filed. The same was allowed by the court below through Exhibit P8 order. The defendants have not challenged Exhibit P6. When there was no challenge in respect of Exhibit P6, the defendants cannot be heard to say that Exhibit P8 is not valid because of Exhibit P4.

6. Only some minor amendments have been sought for. The materials pleaded in the plaint have not been changed. The relief sought for is based on the existing materials already pleaded in the plaint. Matters being so, the amendment was too formal and the same is not open for

any further challenge. Of course, the petitioners are entitled to file an additional written statement in respect of the amended plaint. Considering all the above, this Court is of the view that Exhibit P8 is not open to challenge at present. This Original Petition (Civil) is devoid of merits, and is only to be dismissed, and I do so.

In the result, this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE