

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

OP(C).No. 488 of 2015 (O)

(OS 1061/2013 of PRINCIPAL MUNSIFF COURT, IRINJALAKUDA)

PETITIONERS:

1. JOSEPHEENA AGED 60 YEARS
DAUGHTER OF MOOTHEDATHU JOSEPH & WIFE OF
VAROKKY PAUL, MURIYAD VILLAGE & DESOM
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
2. MARY, AGED 52 YEARS
DAUGHTER OF MOOTHEDATHU JOSEPH & WIFE OF ARAKKAL
THOZHUTHUMPARAMBAIL EDWARD
KOLOTHUMPADY DESOM, VELUKKARA VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
3. MERCY, AGED 50 YEARS
DAUGHTER OF MOOTHEDATHU JOSEPH & WIFE OF
POTTAHTUPARAMBIL SUNNY
CHRIST COLLEGE JUNCTION, IRINJALKUDA VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADVS.SMT.K.MEERA
SRI.BOBY MATHEW

RESPONDENTS:

1. THOMAS, AGED 67 YEARS
SON OF JOSEPH, MOOTHEDATH HOUSE
MURIYAD VILLAGE & DESOM, MUKUNDAPURAM TALUK
THRISSUR DISTRICT - 680027.
2. XAVIER,, AGED 55 YEARS
SON OF JOSEPH, MOOTHEDATHU HOUSE, MURIYAD DESOM VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT 680027.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE PLAINT DATED 22.6.2012 IN OS 1566 OF 2012 BEFORE THE MUNSIF COURT, IRINJALAKKUDA.

EXHIBIT P2: TRUE COPY OF THE PLAINT DATED 4.4.2013 IN OS.1061 OF 2013 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, IRINJALAKKUDA.

EXHIBIT P3: TRUE COPY OF THE WRITTEN STATEMENT OF THE 2ND DEFENDANT FILED ON 6.2.2014 IN O.S. 1061 OF 2013 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, IRINJALAKKUDA.

EXHIBIT P4: TRUE COPY OF THE REJOINDER DATED 24.1.2015 TO THE WRITTEN STATEMENTS OF DEFENDANTS 1 AND 2 FILED BY THE PLINTIFFS IN OS 1061 OF 2013 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, IRINJALAKKUDA.

EXHIBIT P5: TRUE COPY OF THE IA NO.1063 OF 2015 IN OS 1061 OF 2013 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, IRINJALAKKUDA.

EXHIBIT P6: TRUE COPY OF THE OBJECTION FILED BY THE 2ND RESPONDENT TO EXT. P5 IA.

EXHIBIT P7: TRUE COPY OF IA NO 1082 OF 2015 IN OS 1061 OF 2013 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, IRINJALAKKUDA.

EXHIBIT P8: TRUE COPY OF THE OBJECTION FILED BY THE 2ND RESPONDENT TO EXT.P7 I.A.

EXHIBIT P9: TRUE COPY OF THE ORDER DATED 19.2.2015 PASSED IN EXT.P5 I.A.

EXHIBIT P10: TRUE COPY OF THE ORDER DATED 19.2.2015 PASSED IN EXT. P7 I.A.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

P.BHAVADASAN, J.

Original Petition (Civil) No.488 OF 2015

Dated this the 24th day of February, 2015.

J U D G M E N T

The court below dismissed the application filed by the petitioners for having the Will produced in the suit sent for expert's opinion on the ground that it was highly belated and it was a ploy adopted by the petitioners to have the suit removed from the list.

2. The suit was one for partition. It relates to 50 cents of property in Survey No.383/2 of Muriyad village. At the time of hearing the interlocutory application itself 2nd defendant had mentioned about the Will. He filed the written statement on 07.02.2014 in which he gave details of the Will. Issues were cast on 13.08.2014. The court below has noticed that there were several opportunities for both sides to take pre-trial steps but none did anything. After the matter was sent for mediation and since the mediation did not materialise, the matter came back to court on 19.01.2015 and with notice to both parties suit was

listed to 09.02.2015 for trial. It was then that on 07.02.2015 the petitioners came forward with the present applications for sending the Will for expert's opinion and also the suit removed from the list.

3. The court below was perfectly justified in holding that the petitioners had ample opportunities to have the Will sent for expert's opinion. They waited till the suit is included in the list to move applications. As rightly noticed by the court below, this is nothing but a ploy adopted by the petitioners to remove the case from the list of trial. That cannot be encouraged.

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

Sd/-

**P.BHAVADASAN
JUDGE**

smp