

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP(C).No. 669 of 2015 (O)

**OS.NO.88/2011 OF MUNSIF-MAGISTRATE COURT, MANNARKKAD,
DATED 05-02-2015**

PETITIONER(S):

**MYCLE, AGED 60 YEARS,
S/O. DEVASSYA, VAZHEPARAMBIL, INCHIKUNNU,
PALAKKAYAN POST, POTTASSERY, MANNARKAD TALUK,
PALAKKAD.**

BY ADV. SRI.R.SREEHARI

RESPONDENT(S):

- 1. KUNHUTTY @ MATHEW JOSEPH,
S/O. JOSEPH THUDIYAN PLACKAL, EDAYIKKAL,
THACHAMPARA POST, MANNARKAD TALUK,
PALAKKAD DISTRICT-678593.**
- 2. JOY @ JOSEPH, AGED 51 YEARS,
S/O. DEVASSAYA, VAZHEPARAMBIL, INCHIKUNNU
PALAKKAYAN POST, POTTASSERY, MANNARKAD TALUK,
PALAKKAD - 678591.**

**BY ADVS. SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF
SRI.T.U.SUJITH KUMAR
SMT.ANU JACOB**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE PLAINT IN O.S 88/2011 OF MUNSIFF-MAGISTRATE COURT, MANNARKAD.
- EXHIBIT-P2- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT IN O.S 88/2011 OF MUNSIFF MAGISTRATE COURT, MANNARKAD.
- EXHIBIT-P3- TRUE COPY OF THE ADVOCATE COMMISSIONER'S REPORT FILED IN O.S 88/2011 OF MUNSIFF MAGISTRATE COURT, MANNARKAD.
- EXHIBIT-P3(A)-TRUE COPY OF THE PLAN SUBMITTED ALONG WITH EXHIBIT-P3 REPORT.
- EXHIBIT-P4- TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF I.A 450/2014 IN O.S 88/2011.
- EXHIBIT-P5- TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF I.A 451/2014 IN O.S 88/2011.
- EXHIBIT-P6- TRUE COPY OF THE OBJECTION FILED BY THE IST RESPONDENT IN I.A 450/2014 IN O.S 88/2011.
- EXHIBIT-P7- TRUE COPY OF THE OBJECTION FILED BY THE IST RESPONDENT IN I.A 451/2014 IN O.S 88/2011.
- EXHIBIT-P8- TRUE COPY OF THE ORDER IN I.A 450/2014 IN O.S 88/2011 OF MUNSIFF MAGISTRATE COURT, MANNARKAD DATED 05/02/2014.
- EXHIBIT-P9- TRUE COPY OF THE ORDER IN I.A 451/2014 IN O.S 88/2011 OF MUNSIFF MAGISTRATE COURT, MANNARKAD DATED 05/02/2014.
- EXHIBIT-P10- TRUE COPY OF THE CAVEAT NO. 3/2015 OF MUNSIFF MAGISTRATE COURT, MANNARKAD.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(C) No.669 of 2015
.....

Dated this the 9th day of July, 2015

J U D G M E N T

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In a suit for injunction, defendants 1 and 2 contended that they have no properties at the southern side of the plaint schedule property and the property lying at the southern side of the property belongs to Mercy Mathew, who is none other than the wife of the 1st defendant. Then, the plaintiff has filed IA.450/2014 for getting the said Mercy Mathew impleaded as the additional 3rd defendant. Along with it, IA.451/2014 was filed seeking consequential amendments. The court below has dismissed IA.450/2014 as well as IA.451/2014. The said orders are under challenge.

2. Heard learned counsel for the petitioner and learned counsel for the respondents.

3. The learned counsel for the petitioner has pointed out that the said Mercy Mathew, who was sought to be impleaded as additional 3rd defendant, had filed Ext.P10 caveat also. No doubt, the said Mercy Mathew is a necessary party to the suit. The said contention was taken up by defendants 1 and 2 through their written statement also. It seems that the court below has treated the matter casually and has simply stated that “*Since the suit is one for Injunction simplicitor, the proposed supplemental D3 is not a necessary party in the suit*”. The said stand taken by the court below is totally incorrect. In the light of the contentions resorted to by defendants 1 and 2 in their written statement that they are not necessary parties to the suit and that the property lying at the southern side of the plaint schedule property belongs to Mercy Mathew, who is a necessary party to the suit, the court below ought to have allowed

OPC.669/2015

: 3 :

IA.450/2014 as well as IA.451/2014. Matters being so, Exts.P8 and P9 orders are liable to be set aside.

In the result, this O.P.(Civil) is allowed and Exts.P8 and P9 orders are set aside. IA.No.450/2014 and IA.No.451/2014 are allowed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/09/07

// True Copy //

PA to Judge