

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

OP(C).No. 12 of 2014 (O)

(OS.NO. 467/2004 OF I ADDL.SUB COURT, THIRUVANANTHAPURAM)

PETITIONER :

S.K.THANKARAJ,AGED 65 YEARS,S/O.SIMSON,
T.C.17/1048, SOWBHAGYA MELE CHERUKARA ROAD,
POOJAPPURA, SASTHAMANGALAM VILLAGE,
THIRUVANANTHAPURAM.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SMT.R.BINDU
SMT.A.V.PRIYA
SRI.HARISH GOPINATH
SMT.M.K.LEELAKUMARI
SANIL KUNJACHAN

RESPONDENT(S):

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1. SUCHITHRA NAIR @ AMMINI, AGED 55 YEARS,
D/O.JANAKI, KRISHNA VILASOM BUNGLOW, AAYIRAM THOPPU,
THEKKE PUNK KARIKAKKOM MURI, KADAKAMPALLI VILLAGE,
THIRUVANANTHAPURAM, ALSO RESIDING AT HOUSE NO.68
THANI SANDRA ROAD, BEHIND 'SYSTEM ALLOYS',
NAGAVARAM ARABIC COLLEGE P.O., BANGALORE-45.
 2. G.K.THULASEEDHARAN NAIR, AGED ABOUT 64 YEARS,
S/O.GOVINDA KURUP, RESIDING AT HOUSE NO.68,
THANI SANDRA ROAD, BEHIND "SYSTEM ALLOYS",
NAGAVARAM ARABIC COLLEGE P.O., BANGALORE-45.

R2 BY ADV. SRI.J.HARIKUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE PLAINT IN OS 467/2004 ON THE FILE OF THE 1ST ADDITIONAL SUBORDINATE JUDGE'S COURT, TRIVANDRUM.
- EXHIBIT P2 : TRUE COPY OF THE WRITTEN STATEMENT IN OS 467 OF 2004 ON THE FILE OF THE 1ST ADDITIONAL SUBORDINATE JUDGE'S COURT, TRIVANDRUM.
- EXHIBIT P3 : TRUE COPY OF THE ORDER DT. 19-11-2009 IN IA 4152 OF 2009 IN OS 467 OF 2004 ON THE FILE OF 1ST ADDITIONAL SUBORDINATE JUDGE'S COURT, TRIVANDRUM.
- EXHIBIT P4 : TRUE COPY OF THE JUDGMENT DT. 2-7-2010 IN WPC.NO. 1534/2010 ON THE FILE OF THIS HON'BLE COURT.
- EXHIBIT P5 : TRUE COPY OF THE AMENDED PLAINT IN OS 467/2004 ON THE FILE OF THE 1ST ADDITIONAL SUBORDINATE JUDGE'S COURT, TRIVANDRUM.
- EXHIBIT P6 : TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT IN OS 467 OF 2004 FILED BY THE DEFENDANTS.
- EXHIBIT P7 : TRUE COPY OF THE REPLICATION FILED BY THE PLAINTIFF DT. 26-7-2010 IN OS 467/2004 ON THE FILE OF THE 1ST ADDITIONAL SUBORDINATE JUDGE'S COURT, TRIVANDRUM.
- EXHIBIT P8 : TRUE COPY OF THE PROOF AFFIDAVIT DT. 1-3-2012 FILED BY THE PLAINTIFF/PETITIONER.
- EXHIBIT P9 : TRUE COPY OF THE PROOF AFFIDAVIT DT. 22-7-2013.
- EXHIBIT P10 : TRUE COPY OF THE ORDER DT. 25-7-2013 IN OS 467/2004 ON THE FILE OF THE 1ST ADDITIONAL SUBORDINATE JUDGE'S COURT, TRIVANDRUM.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

B.KEMAL PASHA, J.

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O.P.(C). No.12 of 2014

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Dated this the 11th day of June, 2015

J U D G M E N T

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

2. It seems that in a suit for specific performance, evidence was adduced, and thereafter an application seeking amendment of the plaint was filed. The said application was allowed. Amendments were carried out. The defendants were given an opportunity to file additional written statement. Consequently the matter again came up for evidence. At that time, it seems that the plaintiff has filed an affidavit in lieu of chief-examination. The first affidavit filed by the plaintiff in lieu of chief-examination was rejected by the court below on the ground that it is voluminous. Subsequently, another affidavit was filed in lieu of chief-examination. That affidavit is also now seems to be rejected by the court below by taking a view that the affidavit should

confine only to the matters brought out in the amended plaint. It seems that the said approach made by the court below is not correct.

3. On hearing either side, this Court is of the view that the court below can be directed to accept Exhibit P9 affidavit and proceed with the suit by giving sufficient opportunity to the defendants to cross-examine the deponent on all matters contained in the affidavit. Exhibit P10 order stands set aside. The court below shall give an opportunity to the defendants also to file affidavit in lieu of chief-examination and proceed with the suit accordingly.

4. It seems that earlier, this Court had set up a time limit for the disposal of the suit. It is a suit of 2004. The court below shall dispose of the suit as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

This Original Petition (Civil) is disposed of as above.

Sd/-
B.KEMAL PASHA
JUDGE