

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

OP(C).No. 1179 of 2015 (O)

AS 76/2012 OF ADDL.SESIONS COURT (ADHOC)-II, MANJERI

PETITIONER(S):

**BHARATHI KOVILAMMA, AGED 63 YEARS,
W/O.RAJAN NEDUNGADI, PALLATHU VEEDU, ELAMKULAM
ELAD, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.PIN : 679 340.**

BY ADV. SRI.K.DILIP

RESPONDENT(S):

- 1. HAMZA, AGED 62 YEARS,
S/O.CHELAKKADAN KUNHEEN, ELAMKULAM, ELAD,
PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT, PIN : 679 340.**
- 2. RAJAN NEDUNGADI, AGED 69 YEARS,
(MENTALLY RETARDED REP. BY HIS WIFE BHARATHIKOVILAMMA WHO IS
THE PETITIONER ABOVE NAMED),
S/O.VIKRAMAN NEDUNGADI, PALLATHU VEEDU,
ELAMKULAM, ELAD, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT, PIN : 679 340.**
- 3. GEETHA, AGED 42 YEARS
D/O. PALLATH RAJAN NEDUNGADI, PALLATHU VEEDU,
ELAMKULAM, ELAD, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT. PIN : 679 340.**
- 4. CHANDRASEKHARAN, AGED 35 YEARS,
S/O.PALLATH RAJAN NEDUNGADI, PALLATHU VEEDU,
ELAMKULAM, ELAD, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT. PIN : 679 340.**
- 5. SREELATHA, AGED 26 YEARS,
D/O.PALLATH RAJAN NEDUNGADI, PALLATHU VEEDU,
ELAMKULAM, ELAD, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT. PIN : 679 340.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 22-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: A TRUE COPY OF THE PLAINT FILED IN O.S.NO.116/2008 DATED 6.9.2008

**EXT.P-2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER
AND OTHER DEFENDANTS DATED 9.1.2009**

EXT.P-3: A TRUE COPY OF THE JUDGEMENT IN O.S. 116/2008 DATED 22.2.2011

EXT.P-4: A TRUE COPY OF I.A.NO.1009/14 FILED IN A.S. 76/2012 DATED 28.8.14

**EXT.P-5: A TRUE COPY OF THE ORDER IN I.A.NO.1009/14 IN A.S. 76/12 DATED
28.2.2015.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(C) No.1179 of 2015
.....

Dated this the 22nd day of May, 2015

J U D G M E N T

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Petitioners 2 to 5 were defendants 2 to 5 in O.S.116/2008 of the Munsiff's Court, Perinthalmanna. The suit is one for a perpetual injunction. The 1st defendant is the husband of the 2nd defendant. Other defendants are their children. According to the 2nd defendant, the 1st defendant was mentally ill and a document was got executed by the plaintiff in the suit, from the 1st defendant without the knowledge and consent of the other defendants. It seems that such a contention was not taken up in the written statement. According to the petitioner, such a contention was not taken up by the Counsel. The suit was ultimately decreed on which the present appeal has been filed.

2. In the appeal, IA.1009/2014 was filed under

Order VI Rule 17 of the Code of Civil Procedure, 1908 seeking an amendment for incorporating all such facts. The court below has dismissed the application, which is under challenge in this OP(Civil).

3. According to the learned counsel for the petitioner, some questions were put by the learned counsel for the defendants during the examination of witnesses regarding the mental illness of the 1st defendant. Even if such questions were put, it will not make any difference at all. When those contentions were not taken up in the written statement, presently in appeal, the petitioner cannot take up such contentions through an amendment. The impugned order does not suffer from any illegality, irregularity or jurisdictional error. Matters being so, there is no merit in the OP(Civil) and it is only to be dismissed, and I do so.

In the result, OP(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)