

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

OP(C).No. 1204 of 2015 (O)

OS 284/2013 of MUNSIF COURT, ALATHUR

PETITIONER :

**CHANDRAN NAIR, AGED 84 YEARS,
S/O.CHARULATHU NANI AMMA, RESIDING AT ANITHAVIHAR,
TRIPPALUR, PUTHIYANKAM AMSOM DESOM, ALATHUR TALUK**

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS :

- 1. CHANDRAN
S/O.KANDAN, RESIDING AT POONGOTTIL
PUTHIYANKAM AMSOM DESOM, ALATHUR TALUK, 678545**
- 2. VASUDEVAN
S/O.PAZHANIMALA, RESIDING AT KANDATHODI, BANK ROAD,
PUTHIYANKAM AMSOM DESOM, ALATHUR TALUK- 678545**
- 3. MADHAVIKUTTY K.V., S/O.LATE GOPALARISHNAN NAIR,
RESIDING AT VALLETTE VEEDU, KATTUSSERY AMSOM DESOM
ALATHUR TALUK - 678545.**
- 4. K.CHANDRAN
S/O.LATE KRISHNAN, RESIDING AT PARUVACKAL VEEDU
PUTHIYANKAM AMSOM DESOM, ALATHUR TALUK - 678545**
- 5. CHANDRAN
S/O.PAZHANANKUTTY, EDAMPARAMBIL, BANK ROAD
PUTHIYANKAM AMSOM DESOM, ALATHUR TALUK**
- 6. SUKESH BABY
S/O.CHANDRAN, RESIDING AT KUMBALACODE
PUTHIYANKAM AMSOM DESOM, ALATHUR TALUK**
- 7. SURESH BABU, S/O.CHANDRAN
RESIDING AT KUMBALACODE PUTHIYANKAM AMSOM DESOM
ALATHUR TALUK - 678545**

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8. JAYAKUMAR

**S/O.KUNCHAN, RESIDING AT LAKSHMI NIVAS, KUMBALACODE,
PUTHIYANKAM AMSOM DESOM, ALTHAUR TALUK**

9. BALAN,

**S/O.CHATHU, RESIDING AT NANI NIVAS, KANDANTHODI,
BANK ROAD, PUTHIYANKAM AMSOM DESOM, ALATHUR TALUK**

R2,R4 & R6 BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PLAINT IN OS.NO.284/2013 ON THE FILES OF THE COURT OF THE MUNSIFF, ALATHUR.
- P2: TRUE COPY OF THE WRITTEN STATEMENT IN OS.NOL.284/2013 FILED BEFORE THE COURT OF THE MUNSIFF, ALATHUR BY D1,2,3.
- P3: TRUE COPY OF THE IA.NO.716/2015 IN OS.NO.284/2013 ON THE FILES OF THE COURT OF MUNSIFF, ALATHUR.
- P4: TRUE COPY OF THE IA.NO.717/2015 IN OS.NO.284/2013 ON THE FILES OF THE COURT OF THE MUNSIFF, ALATHUR.
- P5: TRUE COPY OF THE IA.NO.718/2015 IN OS.NO.284/2013 ON THE FILE OF THE COURT OF THE MUNSIFF, ALATHUR.
- P6: TRUE COPY OF THE ORDER DATED 30.03.2015 IN IA.NO.716/2015 IN OS.NO.284/2013 ON THE FILES OF THE COURT OF THE MUNSIFF, ALATHUR.
- P7: TRUE COPY OF THE ORDER DATED 30.03.2015 IN IA.NO.7717/2015 IN OS.NO.284/2013 ON THE FILES OF THE COURT OF MUNSIFF, ALATHUR.
- P8: TRUE COPY OF THE ORDER DATED 30.03.2015 IN IA.NO.718/2015 IN OS.NO.284/2013 ON THE FILES OF THE COURT OF MUNSIFF, ALATHUR

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B.KEMAL PASHA, J.

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O.P.(C).No.1204 of 2015

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Dated this the 25th day of June, 2015

J U D G M E N T

What is presently under challenge is Exhibits P7 and P8 orders passed by the court below. Through Exhibit P7, it seems that the Panchayath has been impleaded as the additional 9th defendant in the suit. Through Exhibit P8, consequential amendments have been permitted. It seems that the question to be presently mooted in the suit in case where the Panchayath is in the party array, is precisely whether the suit property belongs to the Panchayath or the temple. In such case, for the institution of the suit against the Panchayath, the notice as contemplated under Section

249(2) of the Kerala Panchayath Raj Act should have been served on the Panchayath. As such a notice has not been served, the suit will become defective. It is on that ground the petitioner challenges the said order passed by the court below.

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

3. It seems that the stand taken by the learned counsel for the petitioner is correct. When such a serious question has to be decided by placing the Panchayath in the party array, especially on the side of the defendant, the statutory notice as contemplated under Section 249(2) of the Kerala Panchayath Raj Act ought to have been served on the Panchayath. The court below ought not to have allowed the amendment.

4. The learned counsel for the respondents has taken the contention that they wanted the Panchayath in the party array only because of the fact that they have got a case that

the ground scheduled as plaint schedule property is a property vested in the Panchayath and not on the temple and therefore, the plaintiffs are not treating the Panchayath as a defendant. Whatever it is, the effect is otherwise. The rights of the Panchayath have to be dealt with in case of their bringing into the suit in the array of the defendants, by calling upon them to forward claim over the property or to defend the claims of others over the property. In such case, the notice as contemplated under Section 249(2) of the Kerala Panchayath Raj Act ought to have been served. Matters being so, Exhibits P7 and P8 are liable to be set aside. The court below shall proceed with the suit as if the Panchayath has not been impleaded in the suit. The amendments allowed through Exhibit P8 are also to be removed.

This Original Petition (Civil) is allowed accordingly. The removal of the Panchayath from the party array will not stand in the way of the plaintiffs to examine the officials of

the Panchayath to prove the case of the plaintiffs, if so advised. The court below shall dispose of the suit as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

B.KEMAL PASHA
JUDGE