

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

OP(C).No. 1303 of 2015 (O)

**O.S.NO.1040/2005 OF ADDITIONAL MUNSIF COURT(RCC),
THIRUVANANTHAPURAM**

PETITIONER(S) :

- 1. S.MANIYAN, S/O.SUKUMARAN,
KANATHUVILAKOM PUTHEN VEEDU, THAMALAM,
POOJAPPURA, THIRUVANANTHAPURAM.**
- 2. OMANA, D/O.SARADA,
PAVARATHALA PANAYIL VEEDU, THAMALAM,
POOJAPPURA, THIRUVANANTHAPURAM.**
- 3. V.SATHEESH @ RAJESH,
S/O.VELAYUDHAN, THAMALAM, POOJAPPURA,
THIRUVANANTHAPURAM.**
- 4. L.THANKAMMA,
D/O.KESAVAN, THAMALAM, POOJAPPURA,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.M.BALAGOVINDAN
SRI.T.K.ANANDA PADMANABHAN**

RESPONDENT(S) :

- 1. SAVITHRI, W/O.LATE RAGHAVAN,
LEKSHMI VILAKATHU VEEDU, THAMALAM,
POOJAPPURA, THIRUVANANTHAPURAM- 695 013.**
- 2. R.SURESH, S/O.RAGHAVAN,
LEKSHMI VILAKATHU VEEDU, THAMALAM,
POOJAPPURA, THIRUVANANTHAPURAM- 695 013.**
- 3. S.AMBIKA KUMARI, D/O.SAVITHRI,
LEKSHMI VILAKATHU VEEDU, THAMALAM,
POOJAPPURA, THIRUVANANTHAPURAM- 695 013.**
- 4. R.JAYAKUMAR, S/O.RAGHAVAN,
THAMALAM, POOJAPPURA, THIRUVANANTHAPURAM- 695 013.**

OP(C).No. 1303 of 2015 (O)

5. R.UDAYA KUMAR, S/O.RAGHAVAN,
THAMALAM, POOJAPPURA, THIRUVANANTHAPURAM- 695 013.

6. R.AJAYA KUMAR, S/O.RAGHAVAN,
THAMALAM, POOJAPPURA, THIRUVANANTHAPURAM- 695 013.

R1 BY ADVS. SRI.L.MOHANAN
SMT.LIGEY ANTONY
SRI.K.SREEKUMARAN NAIR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

OP(C).No. 1303 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S.NO.1040/2005 PENDING
BEFORE THE ADDITIONAL MUNSIFF COURT,
THIRUVANANTHAPURAM DATED 16-07-2005.**

**EXHIBIT P2: TRUE COPY OF THE JUDGMENT IN A.S.NO.190/2007 PASSED BY
THE ADDITIONAL DISTRICT JUDGE-III, THIRUVANANTHAPURAM
DATED 19-01-2011.**

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT IN F.A.O.NO.56/2011 BEFORE
THIS HON'BLE COURT DATED 19-06-2013.**

**EXHIBIT P4: TRUE COPY OF THE ORDER IN I.A.NO.7343/2013 IN
O.S.NO.1040/2005 OF THE ADDITIONAL MUNSIFF(RCC)
THIRUVANANTHAPURAM DATED 09-10-2014**

**EXHIBIT P5: TRUE COPY OF THE ORDER IN I.A.NO.7346/2013 IN A.S.NO.190/2007
IN O.S.NO.1040/2005 ADDITIONAL MUNSIFF (RCC)
THIRUVANANTHAPURAM DATED 9-10-2014.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(C) No.1303 of 2015
.....

Dated this the 22nd day of July, 2015

J U D G M E N T

Through Ext.P3 judgment this Court has passed the following order as item No.(v):

“It is made clear that if any fresh application for amendment of the plaint/written statement is preferred by the parties before the learned Munsiff, that application also shall be decided by the learned Munsiff after hearing both sides on its merit.”

2. According to the petitioners, they have preferred I.A.No.1743 of 2003 for the appointment of a Commissioner and IA 7346 of 2013 for amending the plaint. It seems that through Exts.P4 and P5 orders, the court below has dismissed those applications.

3. Heard the learned counsel for the petitioners and

the learned counsel for the respondent.

4. It seems that from Ext.P4 as well as Ext.P5, it is not discernible as to what are the rival contentions taken up by the parties. The court below has not addressed the contentions resorted to by the respondent as well as the averments made by the petitioners. Matters being so, those orders are liable to be set aside and the matter has to be remitted to the court below for fresh disposal, in accordance with law.

In the result, this Original Petition is allowed and Exts.P4 and P5 orders are set aside. The matters are left open and remitted to the court below for fresh disposal, in accordance with law. This shall be done by the court below, after addressing and adverting to all the contentions and averments from either side.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge