

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

OP(C).No. 163 of 2014 (O)

I.A.NO.614/2012 & 615/2012 IN OS.NO.241/2011 OF SUB COURT, TIRUR.

PETITIONER:

**ARIMNANICHOLA MUHAMMEDKUTTY,
AGED 63 YEARS, S/O.BEERANKUTTY,
ARIMANICHOLA HOUSE, PONMUNDAM AMSOM,
DESOM, TIRUR TALUK.**

**BY ADVS.SRI.N.M.MADHU
SMT.C.S.RAJANI**

RESPONDENT(S):

- 1. C.K. KUNJIMARAKKAR, AGED 58 YEARS,
S/O.ERAMUTTY, CHERUKKATTIL HOUSE,
KOTTAKKAL AMSOM, DESOM, P.O.KOTTAKKAL,
TIRUR TALUK - 676503.**
- 2. ABDULSALAM, AGED 43 YEARS, S/O.ERAMUTTY,
CHERUKKATTIL HOUSE, KOTTAKKAL AMSOM,
DESOM, P.O.KOTTAKKAL, TIRUR TALUK - 676503.**
- 3. KUNJIMOIDEEN, AGED 54 YEARS, S/O.ERAMUTTY,
CHERUKKATTIL HOUSE, KOTTAKKAL AMSOM,
DESOM, P.O.KOTTAKKAL, TIRUR TALUK - 676503.**
- 4. KUNJATHOOTTY, AGED 51 YEARS, D/O.ERAMUTTY,
CHERUKKATTIL HOUSE, KOTTAKKAL AMSOM,
DESOM, P.O.KOTTAKKAL, TIRUR TALUK - 676503.**
- 5. KADEEJA, AGED 40 YEARS, D/O.ERAMUTTY,
CHERUKKATTIL HOUSE, KOTTAKKAL AMSOM,
DESOM, P.O.KOTTAKKAL, TIRUR TALUK - 676503.**
- 6. RAMLA, AGED 37 YEARS, D/O.ERAMUTTY,
CHERUKKATTIL HOUSE, KOTTAKKAL AMSOM,
DESOM, P.O.KOTTAKKAL, TIRUR TALUK - 676503.**

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7. MUMTHAS, AGED 35 YEARS, D/O.ERAMUTTY,
CHERUKKATTIL HOUSE, KOTTAKKAL AMSOM,
DESOM, P.O.KOTTAKKAL, TIRUR TALUK - 676503.
8. KATHIYAMOO, W/O.CHERUKATTIL ERAMUTTY,
CHERUKKATTIL HOUSE KOTTAKKAL AMSOM,
DESOM, P.O.KOTTAKKAL, TIRUR TALUK - 676503.

BY ADV. SRI.JAMSHEED HAFIZ

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-01-2015,
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 O.S.NO.241/2011 ON THE FILES OF THE SUB COURT, TIRUR.
- EXHIBIT-P2: TRUE COPY OF THE WRITTEN STATEMENT DATED 03.03.2012 FILED BY THE RESPONDENTS.
- EXHIBIT-P3: TRUE COPY OF THE APPLICATION DATED 14.02.2012 AS I.A.NO.614/2012.
- EXT-P3(A): TRUE COPY OF THE APPLICATION DATED 14.02.2012 AS I.A.NO.615/2012.
- EXHIBIT-P4: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT TO EXT.P3.
- EXT-P4(A): TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT 3 TO 8 EXT.P3(A).
- EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 01.11.2013 IN EXT.P3.
- EXT-P5(A): TRUE COPY OF THE ORDER DATED 01.11.2013 IN EXT.P3(A).
- EXHIBIT-P6: PHOTOCOPY OF THE CERTIFIED COPY OF THE SALE DEED NO.4598/2011.

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

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P.BHAVADASAN, J.

O.P.(C) No. 163 of 2014

Dated this the 20th day of January, 2015

J U D G M E N T

Under challenge is Ext.P5 order whereby the court below dismissed an application for impleading certain parties to the petition on the basis that they are co- owners.

2. The petitioner is a tenant of the property and he claims entrustment from the first defendant in the suit. He also has prayed for mandatory injunction against the first defendant. Later on, it is pointed out that he came to know from Ext.P6 that others have also interest in the property and so he by way of abundant caution, sought to bring them as additional defendants 3 to 8 on the party array.

3. Notice taken out to additional defendants 3 to 8, they entered appearance and they filed a counter saying that they are not joint owners and they have no interest in the property. The court below, accepting the said statement made by the persons who were sought to be impleaded,

dismissed the petition. It is the said order that is assailed before this Court.

4. Even though the petitioner contends that by way of abundant caution, they may be made parties to the suit, in the light of stand taken by the persons who are sought to be impleaded as additional respondents, their presence in the suit becomes unnecessary. They do not claim any right over the property and more so, as rightly pointed out by the learned counsel for the respondent, the entrustment is from the first defendant and the relief was sought for only as against the first defendant in the suit. If that be so, additional defendants 3 to 8 are unnecessary parties to the suit.

This petition is without merits and it is accordingly dismissed.

**P.BHAVADASAN
JUDGE**

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