

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

OP(C).No. 3412 of 2013 (O)

AGAINST THE ORDERS IN IA NOS.1455 TO 1457/2012 IN OS NO.4/2011 of MUNSIF COURT,
ETTUMANOOR DATED 22-03-2013

PETITIONER(S)/PETITIONER/2ND DEFENDANT:

MARIYAMMA THOMAS
TEMPORARILY RESIDING AT 16, SHELBY ROAD, STRETFORD,
MANCHESTER, M32 9PB
UNITED KINGDOM FROM VALATHATTIL HOUSE, THAVALAKUZHY
ETTUMANOOR P O, ETTUMANOOR VILLAGE, KOTTAYAM DISTRICT
REPRESENTED THROUGH HER POWER OF ATTORNEY MARTIN FRANCIS
PEZHUMKATTIL HOUSE, ANAVILASOM MURI
ANAVILASOM VILALGE, UDUMPANCHOLA TALUK

BY ADVS.SRI.C.V.MANUVILSAN
SRI.OOMMEN M. MATHEW
SRI.G.SUDHEER (THURAVOOR)
SMT.K.VIDYA
SRI.RAJAN VISHNURAJ
SRI.VHARISH

RESPONDENT(S)/COUNTER PETITIONER/PLAINTIFF/1ST DEFENDANT:

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1. ANNAMMA ALEXANDER
VETTUVELIL HOUSE, EDAYIRIKKAPPUZHA P O
KANGAZHA VILLAGE , KOTTAYAM DISTRICT-686541
 2. LEELAMMA, VALATHATTU HOUSE,
THAVALAKKUZHY, ETTUMANOOR P O, ATHIRAMPUZHA VILLAGE
KOTTAYAM DISTRICT-686631

R2 BY ADV.SRI.ABRAHAM P.GEORGE
R2 BY ADV.SRI.K.VINODKUMAR (707/89)
R2 BY ADV.SMT.M.SANTHY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-06-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 3412 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:-A TRUE PHOTOCOPY OF THE POWER OF ATTORNEY DTD 4/5/2010 EXECUTED BY THE PETITIONER IN FAVOUR OF THE 1ST RESPONDENT TO REPRESENT AND CONDUCT THE CASE VIZ.OS NO 583/2009 PENDING BEFORE THE FILED OF LEARNED SUB COURT, KOTTAYAM

EXT.P2:-A TRUE PHOTOCOPY OF THE PLAINT FILED BY THE 1ST RESPONDENT HEREIN IN OS NO 4/2011

EXT.P3:-A TRUE PHOTOCOPY OF THE POWER OF ATTORNEY EXECUTED BY THE PETITIONER IN FAVOUR OF HER HUSBAND TO REPRESENT AND CONDUCT THE CASE VIZ-OS NO 4/2011 PENDING BEFORE THE FILES OF LEARNED MUNSIF, ETTUMANOOR

EXT.P4:-A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE LEARNED MUNSIF, ETTUMANOOR IN IA NO 1455/2012 IN OS NO 4/2011

EXT.P5:-A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE LEARNED MUNSIF, ETTUMANOOR IN IA NO 1456/2012 IN OS NO 4/2011

EXT.P6:-A TRUE PHOTOCOPY OF THE ORDER PASSED BY THE LEARNED MUNSIF, ETTUMANOOR IN IA NO 1457/2012 IN OS NO 4/2011

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C). No.3412 of 2013

Dated this the 30th day of June, 2015

JUDGMENT

Heard. Judgment dated 29.06.2015 is recalled.

2. Three applications filed before the Munsiff Court, Ettumanoor in O.S.No.4 of 2011, a suit for fixation of boundary and prohibitory injunction, were dismissed by separate orders (Exts.P4 to P6), which are under challenge in this petition.

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

4. The petitions filed before the learned Munsiff were for setting aside an exparte order, transposing the second defendant, who is the owner of the property in respect of which fixation of boundary was sought, as additional plaintiff and another application for accepting the power of attorney executed by the second defendant in favour of her husband. All the applications were dismissed by the learned Munsiff by Exts.P4 to P6 orders.

5. After hearing the learned counsel for the parties and also after perusing the impugned orders, I am of the view that the learned Munsiff has committed a grave legal error and dismissed the applications on wrong

legal principles.

6. Ext.P4 is the order passed by the trial Judge in a petition seeking transposition of second defendant as additional plaintiff. The suit was admittedly filed during the absence of second defendant in India through an agent appointed by her. Now she wants to be transposed as plaintiff for effectively prosecuting the suit. By no stretch of reasoning, the prayer could have been disallowed by the learned Munsiff. That apart, the second defendant was set *exparte*. She filed an application to set aside the *exparte* order so as to enable her to prosecute the matter further. Learned Munsiff did not correctly understand the law in Order IX Rule 7 of the Code of Civil Procedure. It says that the court after setting the defendant *exparte* for proceeding with the suit, can allow the defendant to appear on a later date and if he shows good cause for his previous non-appearance upon such terms as costs or otherwise, he can be heard on the day fixed for his appearance. This provision has been interpreted in many decisions holding that if he does not show good cause for his previous non-appearance, the only possible difficulty that the defendant will have to face is that he has to proceed from the date of his appearance and not from any previous date. Therefore, viewing from any angle, court below should have allowed the prayer of the second defendant to set the *exparte* order aside.

7. Learned Munsiff as per Ext.P6 order rejected the request to

accept the power of attorney executed by the second defendant in favour of her husband. The rejection made by the learned Munsiff is legally unsustainable. The reasons stated are perverse. Therefore, I find no logic to uphold the views expressed by the learned Munsiff in any of the petitions.

In the result, this petition is allowed. Impugned orders (Exts.P4 to P6) are set aside. The exparte order passed against the second defendant in O.S.No.4 of 2011 on the file of the Munsiff Court, Ettumanoor is set aside. The second defendant shall be allowed to be transposed as additional plaintiff in the above suit. The power of attorney executed by the second defendant in favour of her husband, if it conforms to the legal requirements, shall be received on file. The defendant, if so advised, can file additional written statement if any facts are to be controverted.

A. HARIPRASAD, JUDGE.

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