

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

OP(C).No. 1407 of 2015 (O)

I.A.NO.3810/12 AND I.A.NO.6986/12 IN O.S.NO.895/2011 OF
PRINCIPAL SUB COURT, ERNAKULAM

PETITIONERS :

1. MANI, AGED 64 YEARS,
S/O. NARAYANAN, THIRUNILATH HOUSE,
KADUNGAMANGALAM, THIRUVANKULAM P.O., PIN- 682305,
ERNAKULAM DISTRICT.

2. SAROJINI,
W/O. MANI, AGED 60 YEARS, THIRUNILATH HOUSE,
KADUNGAMANGALAM, THIRUVANKULAM P.O., PIN- 682305,
ERNAKULAM DISTRICT.

BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SRI.M.VARGHESE VARGHESE
SMT.UMA R.KAMATH
SMT.S.SANDHYA
SRI.BEPIN PAUL
SRI.SHALU VARGHESE
SRI.K.J.SEBASTIAN

RESPONDENTS:

1. AMBUJAKSHY,
W/O. THANKAPPAN, RESIDING AT THIRUNILATH,
CHENEDATH PARAMBU, KUREEKAD P.O., THIRUVANKULAM
682305, ERNAKULAM DISTRICT.

2. PRINCE,
S/O. PURUSHAN, THIRUNILATH HOUSE, KADUNGAMANGALAM,
THIRUVANKULAM P.O., PIN- 682305, ERNAKULAM DISTRICT.

3. THE SURVEY SUPERINTENDENT,
RE-SURVEY OFFICE, COLLECTORATE, KAKKANAD,
PIN- 682030.

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4. THE ADDL. THAHSILDAR,
RE-SURVEY, KANAYANNUR TALUK, TALUK OFFICE,
ERNAKULAM, PIN- 682011.

R1 BY ADV. SRI.N.RATHEESH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/24/8/15

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APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 COPY OF THE PLAINT IN O.S.895/2011 PENDING BEFORE THE
HON'BLE SUB COURT ERNAKULAM.

EXT.P2 COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST
DEFENDANT IN O.S.895/2011 BEFORE THE HON'BLE SUB
COURT,ERNAKULAM.

EXT.P3 COPY OF THE IMPLEADMENT PETITION I.A.3810/2012 IN
O.S.895/2011 BEFORE THE HON'BLE SUB COURT,ERNAKULAM,FILED BY
THE PLAINTIFF/IST RESPONDENT HEREIN.

EXT.P4 COPY OF THE COUNTER AFFIDAVIT FILED BY THE
PETITIONERS 1 & 2 HEREIN AS RESPONDENTS TO THE IMPLEADMENT
APPLICATION I.A.3810/2012 IN O.S.895/2011 BEFORE THE HON'BLE
SUB COURT,ERNAKULAM.

EXT.P5 COPY OF THE ORDER DATED 24.03.2015 OF THE HON'BLE
SUB COURT,ERNAKULAM ALLOWING I.A.3810/2012 IN O.S.895/2011.

EXT.P6 COPY OF THE IMPLEADMENT PETITION (TO IMPLEAD RE-
SURVEY TAHSILDAR) I.A.6986/2012 IN O.S.895/2011 FILED BY THE
PLAINTIFF BEFORE THE HON'BLE SUB COURT,ERNAKULAM.

EXT.P7 COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER
HEREIN AS RESPONDENT IN I.A.6986/2012 IN O.S.895/2011 BEFORE
THE HON'BLE SUB COURT,ERNAKULAM.

EXT.P8 COPY OF THE ORDER DATED 24.03.2015 OF THE HON'BLE SUB
COURT,ERNAKULAM ALLOWING IN I.A.6986/2012 IN O.S.895/2011.

RESPONDENTS' EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/24/8/15

B.KEMAL PASHA, J.

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O.P.(C). No.1407 of 2015

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Dated this the 17th day of August, 2015

J U D G M E N T

In a suit for fixation of boundary before the court below, the neighbouring property owners were impleaded as defendants 1 and 2. Later it has come out that the wife of the 1st defendant is the actual title holder in respect of the neighbouring property. Therefore, an application was filed for impleading the wife of the 1st defendant as the additional 3rd defendant in the suit. Over and above it, the respondent/plaintiff wanted to implead the Survey Superintendent also in the party array as additional 4th defendant. Exhibit P3 I.A. was filed for impleading additional 3rd defendant and additional 4th defendant. After

that Exhibit P6 I.A. was also filed for impleading the Additional Tahsildar also as the additional 5th defendant in the suit. It seems that through Exhibits P5 and P8 orders, the court below has allowed both the applications without any discussions.

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

3. It seems that through Exhibit P5 as well as Exhibit P8, the court below has impleaded two Government Officials also into the party array, for the acts purportedly done by them in discharge of their official duties. In such case, as per Order XXVII Rule 5A CPC, the plaintiff ought to have made the Government also a party to the suit. Unless and until the Government was brought into the party array, the Government officials could not have been dragged into this kind of litigation. Matters being so, Exhibit P5 order passed by the court below requires modification, and further, Exhibit P8 is liable to be set aside.

In the result, this Original Petition (Civil) is allowed in part by modifying Exhibit P5 order. Exhibit P5 order so far as it relates to the additional 3rd defendant, namely Sarojini, is sustained. Additional 4th defendant, who is impleaded through the said order, shall be removed from the party array. Similarly, Exhibit P8 order stands set aside. Additional 5th defendant impleaded in the party array is also ordered to be removed from the party array. The suit shall be proceeded with defendants 1 and 2 as well as additional 3rd defendant in the array of defendants.

Sd/-

B.KEMAL PASHA
JUDGE