

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

OP(C) .No. 377 of 2014 (O)

IA NO.524/2014 IN OS NO.147/2011 OF THE LEARNED PRINCIPAL MUNSIFF, KOLLAM

PETITIONER(S)/PLAINTIFF 1 & 2:

1. DEVADAS,
AGED 39 YEARS, S/O.SOMARAJAN,
MANGALATH NAGAR, 112B,
PUNTHALATHAZHAM, KILIKOLLOOR P.O., VADAKKEVILA,
KOLLAM - 691 004.
2. CHANDRIKA,
AGED 53 YEARS, S/O.SANKARAN,
KAROTUPANAYIL, THAZHATHIL VEEDU,
PUNTHALATHAZHAM, KILIKOLLOOR P.O., VADAKKEVILA,
KOLLAM - 691 004.

BY ADVS.SRI.SHAJI P.CHALY,
SRI.R.SANJITH &
SMT.SINDHU KRISHNAN C.S.

RESPONDENT(S)/DEFENDENTS/PLAINTIFF-3:

1. VASUMATHY,
AGED 55 YEARS, WHITE HOUSE, SIVA NAGAR-2,
PUNTHALATHAZHAM
KILIKOLLOOR P.O., VADAKKEVILA, KOLLAM - 691 004.
2. VINURAJ,
AGED 25 YEARS, S/O.VASUMATHY,
WHITE HOUSE, SIVA NAGAR-2,
PUNTHALATHAZHAM, KILIKOLLOOR P.O., VADAKKEVILA,
KOLLAM - 691 004.
3. SASIDHARAN PILLAI,
AGED 42 YEARS, S/O.PARAMESWARAN PILLAI,
NARAYANA MANDIRAM, PUNTHALATHAZHAM,
KILIKOLLOOR P.O., VADAKKEVILA,
KOLLAM - 691 004.

R1 & 2 BY ADV. SRI.R.NIKHIL
R3 BY ADV. SRI.V.A.AJIVAS
R1&2 BY ADV. SRI.BINU PAUL (NETTOOR)
R1&2 BY ADV. SRI.P.ABDUL RAZAK

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

RVS.

OP(C).No. 377 of 2014 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1. TRUE COPY OF THE SKETCH SHOWING THE PLAINT A SCHEDULE PATHWAY.
- EXHIBIT P1(A). TRUE COPY OF THE PLAINT IN O.S.NO.147/2011 BEFORE THE PRINCIPLE MUNSIFFS COURT, KOLLAM.
- EXHIBIT P1(B). TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.147/2011.
- EXHIBIT P2. TRUE COPY OF I.A.NO.524/2014 DATED 31.01.2014.
- EXHIBIT P3. TRUE COPY OF THE MEMO DATED 01.02.2014.
- EXHIBIT P4. TRUE COPY OF THE OBJECTION IN I.A.NO.524/2014 DATED 01.02.2014.
- EXHIBIT P5. TRUE CARBON COPY OF THE ORDER DATED 03.02.2014 IN I.A.NO.524/2014 IN O.S.NO.147/2011.

RESPONDENT(S) ' EXHIBITS :

- EXHIBIT R2(A). TRUE COPY OF THE REPLICATION FILED BY THE POLAINTIFFS IN OS NO.147/2011 ON THE FILES OF THE PRINCIPAL MUNSIFF'S COURT, KOLLAM.
- EXHIBIT R2(B). TRUE COPY OF THE JUDGMENT DATED 11/10/2012 IN OS NO.147/2011, ON THE FILES OF THE PRINCIPAL MUNSIFF'S COURT, KOLLAM.
- EXHIBIT R2(C). TRUE COPY OF THE APPLICATION FOR RESTORATION OF OS NO.147/2011 ON THE FILES OF THE PRINCIPAL MUNSIFF'S COURT, KOLLAM.

/TRUE COPY/

P.A.TO JUDGE

RVS.

B. KEMAL PASHA, J.

.....
O.P.(C) No.377 of 2014
.....

Dated this the 29th day of July, 2015

J U D G M E N T

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

2. The suit before the court below was filed by three plaintiffs. Later, one of the plaintiffs had allegedly changed sides. The remaining two plaintiffs filed an application under Order XXIII Rule 1(3) CPC for permitting them to withdraw from the suit. The learned counsel for the petitioners, who was appearing for the other plaintiff also, had relinquished his engagement of the said plaintiff, who was not a party to the IA. The court below has rightly dismissed the IA as it is hit by Order XXIII Rule 1(5) CPC. The present request of the learned counsel for the petitioners is that all the plaintiffs may be permitted to file a fresh petition under Order XXIII Rule 1(3) CPC.

3. On hearing either side and on a perusal of the records, this Court is of the view that the said request forwarded by the learned counsel for the petitioners can be allowed. The court below shall entertain a fresh petition, if any, filed for and on behalf of the three plaintiffs under Order XXIII Rule 1(3) CPC, and shall pass appropriate orders in accordance with law.

With the said observations, this O.P.(Civil) is closed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/29/07

// True Copy //

PA to Judge