

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

OP(C).No. 3791 of 2013 (O)

AGAINST ORDER DATED 30.08.2013 IN IA NO.128/2013 IN OS NO.122/2005 AND ORDER IN IA
NO.130/2013 IN OS NO.248/2012 OF MUNSIF COURT , PERUMBAVOOR

PETITIONER(S)/PLAINTIFF:

MUSTHAF A, AGED 46 YEARS
S/O.KUNJU MEETHIAN, AYATHAN HOUSE, N CHELAKULAM KARA
PATTIMATTOM VILLAGE, KUNNATHUNADU TALUK
ERNAKULAM DISTRICT.

BY ADV. SRI.K.G.CLEETUS

RESPONDENT(S)/DEFENDANTS:

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1. VIYYOKUTTY, AGED ABOUT 69 YEARS
W/O. THELAYI PAREEKUTTY, MOLATHUKUDY HOUSE
CHELAKKULAM KARA, PATTIMATTOM VILLAGE
KUNNATHUNADU TALUK-683578.
 2. HAMEED, AGED ABOUT 53 YEARS
S/O. THELAYI PAREEKUTTY, MOLATHU HOUSE
CHELAKKULAM KARA, PATTIMATTOM VILLAGE
KUNNATHUNADU TALUK-683578.
 3. JAMEELA, AGED ABOUT 43 YEARS
W/O.ISMAYIL, D/O.THELAYI PAREEKUTTY, MOLATHUKUDY HOUSE
WEST VENGOLA P.O., NEAR POOMALA CRUSHER
POOMALA BHAGOM, ARACKAPPADY VILLAGE
KUNNATHUNADU TALUK-683578.
 4. SUHARA, AGED ABOUT 37 YEARS
W/O.ABOOBACKER, D/O. THELAYI PAREETH, ETTIYATTIL HOUSE
IDAVOOR P.O., OKKAL GRAMA PANCHAYATH
KOOVAPPADY VILLAGE, KUNNATHUNADU TALUK-683578.
 5. SAJITHA, AGED ABOUT 33 YEARS
D/O.THELAI PAREETH, W/O.SIDHIQUE, CHERULLIYIL HOUSE
PALIPRASSERY BHAGOM, CHENGAMANAD P.O.
CHENGAMANAD GRAMA PANCHAYATH, CHENGAMANAD VILLAGE
ALUVA TALUK-683578.
 6. MEETHIYAN, AGED 60 YEARS
S/O.ISMAYIL, VARAPPOTHU MUNDETH VEETIL
CHELAKULAM KARA, PATTIMATTOM VILLAGE
KUNNATHUNADU TALUK -683578.

R2 BY ADVS. SRI.V.RAJENDRAN PERUMBAVOOR
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-06-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 3791 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF PLAINT IN O.S.NO.248/12
EXHIBIT P2 : TRUE COPY OF LAINT IN O.S.NO.122/05
EXHIBIT P3 : TRUE COPY OF COMMISSION REPORT DATED 04.04.2005 IN O.S.NO.122/05
EXHIBIT P3(A) : TRUE COPY OF THE ROUGH SKETCH PRODUCED ALONG WITH
COMMISSION REPORT
EXHIBIT P4 : TRUE COPY OF WRITTEN STATEMENT DATED 29.07.2005 FILED BY THE
PETITIONER
EXHIBIT P5 : CERTIFIED COPY THE JUDGMENT DATED 17.07.2008 IN A.S.33/08 OF SUB
COURT, PERUMBAVOOR
EXHIBIT P6 : TRUE COPY OF THE COMMISSION REPORTN IN O.S.NO.122/05
EXHIBIT P6(A) : TRUE COPY OF THE SURVEY SKETCH DATED 14.05.2010 PRODUCED
ALONG WITH COMMISSIONER REPORT
EXHIBIT P7 : TRUE COPY OF THE JUDGMENT DATED 08.11.2012 IN O.P.(C) 152/11B OF
HIGH COURT OF KERALA
EXHIBIT P8 : TRUE COPY OF THE I.A.130/13 IN O.S.NO.248/13 FOR JOINT TRIAL
EXHIBIT P9 : TRUE COPY OF THE I.A.NO.128/13 IN O.S.248/13 FOR JOINT TRIAL
EXHIBIT P10 : TRUE COPY OF THE OBJECTION DATED 29.01.2013 AGAINST THE JOINT
TRIAL PETITION
EXHIBIT P11 : TRUE COPY OF THE ORDER DATED I.A.128/13 IN O.S.NO.122/05
EXHIBIT P12 : TRUE COPY OF THE ORDER DATED I.A.130/13 IN O.S.NO.248/12

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.3791 of 2013

Dated this the 26th day of June, 2015

JUDGMENT

Exts.P11 and P12 orders passed by the learned Munsiff, Perumbavoor in O.S.No.248 of 2012 are under challenge. Request for consolidation of suits was rejected.

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

3. Exts.P1 and P2 are the plaints presented before the lower court. The plaintiff in Ext.P1 suit is the defendant in Ext.P2 suit. The subject matter in both the suits is a disputed pathway. As per Ext.P12 order, learned Munsiff dismissed an application for consolidation of these two suits. According to the learned counsel for the petitioner, observation by the learned Munsiff in the impugned order that the subject matter in both the suits are not the same is incorrect. It is also submitted by the learned counsel for the petitioner that some of the parties in both the suits are common and in one suit, there are additional parties. Certainly that will not make the suit unworthy of a joint trial. It is seen that O.S.No.122 of 2005, one of the suits, was disposed of by the trial court and taken in appeal to the Sub Court. Thereafter, the Sub Court remanded the matter to the trial

court for fresh consideration after adducing further evidence. Considering the facts and circumstances, I am of the view that to avoid multiplicity of proceedings and also cumbersome trial of two suits, the course of consolidation of suits can be adopted. There is no reason to think that any of the parties will suffer prejudice on account of the joint trial of suits. Learned counsel for the respondents also conceded that there is no objection for the respondents in going for a joint trial.

In the result, the petition is allowed. Exts.P11 and P12 orders are set aside. The trial court shall consolidate O.S.No.122 of 2005 and 248 of 2012 and try the same in accordance with law and dispose of the same as expeditiously as possible, at any rate within a period of six months from the date of production of a copy of this judgment.

A. HARIPRASAD, JUDGE.

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