

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

OP(C).No. 536 of 2014 (O)

**AGAINST EXT.P6 ORDER IN I.A.NO.4812/2013 & IA.NO.4357 OF 2013 IN
O.S.NO.347 OF 2013 OF MUNSIF COURT, KANNUR**

PETITIONER(S):

**PALLIKKARA KOROTH CHANDRAMATHI AGED 72 YEARS
D/O. SREEDEVI AMMA, RETD. TEACHER, CHERUKUNNU VILLAGE
CHERUKUNNU DESOM, KANNUR TALUK, KANNUR DISTRICT.**

BY ADV. SRI.B.PREMNATH (E)

RESPONDENT(S):

- 1. P.K NARENDRANATHAN, AGED 68 YEARS
S/O. SREEDEVI AMMA, AGRICULTURALIST
AMBALAMUKKU AMSOM DESOM, PEROORKADA.**
- 2. P.K.RAJALAKSHMI, AGED 62 YEARS
D/O SREEDEVI AMMA, HOUSE WIFE, ANDAL NAGAR
CROSS STREET NO.29 III, CHENNAI
TAMIL NADU. REPRESENTED BY THE POWER
OF ATTORNEY HOLDER C.RADHAKRISHNAN.**

R1 & 2 BY ADV. SRI.M.RAMESH CHANDER (SR.)

R1 & 2 BY ADV. SRI.ANEESH JOSEPH

R1 & 2 BY ADV. SMT.DENNIS VARGHESE

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 11-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PLAINT FILED IN O.S.347/2013 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT, KANNUR, DATED 24.8.2013.

EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT FILED IN O.S.347/2013 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT, KANNUR, DATED 24.9.2013.

EXHIBIT P3: TRUE COPY OF THE MEMO FILED BY THE RESPONDENT BEFORE THE MEDIATOR IN O.S.347/2013 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT, KANNUR, DATED 11.10.2013.

EXHIBIT P4: TRUE COPY OF THE I.A.NO.4357/2013 FILED IN O.S.347/2013 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT, KANNUR, DATED 17.10.2013.

EXHIBIT P5: TRUE COPY OF THE I.A.NO.4812/2013 FILED IN O.S.347/2013 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT, KANNUR, DATED 15.11.2013.

EXHIBIT P6: TRUE COPY OF THE ORDER IN I.A.NO.4812/2013 FILED IN O.S.347/2013 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT, KANNUR, DATED 22.11.2013.

EXHIBIT P7: TRUE COPY OF THE ORDER IN I.A.NO.4357/2013 FILED IN O.S.347/2013 ON THE FILE OF THE HON'BLE MUNSIFF'S COURT, KANNUR, DATED 22.11.2013.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.536 of 2014

Dated this the 11th day of September, 2015

J U D G M E N T

Petitioner was the plaintiff in O.S.No.347 of 2013 on the file of Munsiff, Kannur. The respondents were the defendants. The suit was for declaration of the petitioner's title to the plaint scheduled property, which was allotted to him under a partition deed. As an alternative relief he prayed that if the court finds that the partition deed is not valid a decree for partition may be passed. In the written statement filed by the respondents they admitted the title of the petitioner to the property and pleaded that the relief of declaration may be granted. They also filed an application under Order 15 Rule 1 C.P.C. for passing a decree. Meanwhile, the petitioner filed IA.No.4812 of 2013 for permission to withdraw the suit with liberty to file a fresh suit. That was dismissed by the learned Munsiff by Ext.P6 order a decree in favour of the petitioner was passed. The prayer in this O.P is to set aside Ext.P6 order in IA.No.4812 of 2013 and Ext.P7 order in IA.No.4357 of 2013 in which the prayer was to dismiss the IA filed by the respondents under Order 15 Rule 1 C.P.C.

2. Heard the learned counsel for the petitioner.

3. First of all, in the affidavit filed in support of the IA for withdrawal of the suit with liberty to file a fresh suit no reason worthy of notice has been mentioned. What is stated is that there are "several irregularities in the partition deed relied on in the plaint". That is no ground to allow an application under Order 23 Rule 1 C.P.C. There must be technical defects in the suit not in a document relied on by the plaintiff. That apart, the plaintiff cannot object to the court passing a decree in his favour.

4. The main argument of the learned counsel is that the question of filing an application under Order 15 Rule 1 C.P.C arises only on the first hearing date, which can never be for the date posted for settlement of issues. There is no quarrel about it. But Order 12 Rule 6 C.P.C empowers this court to pass a decree even suo moto at any stage of the suit on the admission of the defendant. In any view of the matter, I do not find any illegality or irregularity in the order passed by the trial court. There is also a prayer in the O.P that the petitioner may be allowed to withdraw the suit unconditionally. Once it is found that

the decree passed by the lower court is not tainted with any illegality or irregularity there is no question of allowing the petitioner to withdraw the suit unconditionally. So, this prayer also cannot be granted.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge