

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

OP(C).No. 4114 of 2013 (O)

OS. NO.337/2012 OF ADDITIONAL MUNSIFF COURT, KOLLAM.

.....

PETITIONER(S):

**MADHUSOODHANAN PILLAI, POIKAYIL VEEDU,
PUNUKKANNOR CHERRY, ELAMPALLOOR VILLAGE,
PERUMPUZHA, KOLLAM-691 504.**

**BY ADVS.SRI.K.G.ANIL BABU,
SRI.R.RAJESH(PULLIKADA),
SRI.KRISHNA KUMAR G.S.**

RESPONDENT(S):

**1. DIVAKARAN PILLAI, PAPPADI THUNDIL VEETIL,
HOUSE NO.124, PUNUKKANNOOR CHERRY,
WARD NO.2, ELAMPALLOOR VILLAGE,
PERUMPUZHA, KOLLAM-691 504.**

**2. SANTHAMMA, PAPPADI THUNDIL VEETIL,
HOUSE NO.124, PUNUKKANNOOR CHERRY,
WARD NO.2, ELAMPALLOOR VILLAGE,
PERUMPUZHA, KOLLAM-691 504.**

**R1 & R2 BY ADVS. SRI.V.V.RAJA,
SRI.M.T.SURESHKUMAR.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 4114 of 2013 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 THE CERTIFIED COPY OF THE PLAINT FILED BY THE
RESPONDENT/PLAINTIFFS.
- EXT.P2 THE CERTIFIED COPY OF THE I.A. NO.2005/2012.
- EXT.P3 THE CERTIFIED COPY OF THE OBJECTIONS FILED BY THE
PLAINTIFFS TO THE MAINTAINABILITY IN O.S. 337/2012.
- EXT.P4 THE CERTIFIED COPY OF THE ORDER IN I.A. NO.2005/2012
IN O.S. NO.337/2012 DATED 29/07/2013.
- EXT.P5 THE CERTIFIED COPY OF THE ORDER IN O.S. NO.337/2012
DATED 19/08/2012.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B.KEMAL PASHA, J.

.....
O.P.(C) No.4114 of 2013
.....

Dated this the 3rd day of July 2015

J U D G M E N T

Exts.P4 and P5 are under challenge. It seems that even though the question of maintainability of the suit can only be a mixed question of law and facts in this case, the petitioner wanted the court below to consider it as a question of law and raised it as a preliminary issue. Even though several facts have to be decided for applying the concerned law, the court below has decided the question as a preliminary issue and disposed of the matter through Exts.P4 and P5. In fact through Ext.P4, it seems that the same is as good as a decree against the defendant, and he is deprived of any right over the property.

2. It has to be noted that item No.1 property is the property devolved exclusively on the deceased through a settlement deed executed by the first plaintiff, father of the deceased. Item No.2 property is a property acquired jointly in the name of the defendant as well as the deceased. It is the case of the respondents that the said property was acquired by using the funds of the parents of the deceased. For proving that aspect also evidence is required. It was not an appropriate stage for the court below to decide the question of maintainability of the suit as such, without recording the evidence in the matter and therefore, Exts.P4 and P5 are liable to be set aside.

In the result, this Original Petition is allowed and Exts.P4 and P5 are set aside. The court below shall decide the question of maintainability after recording the evidence on facts. Both sides shall be given an opportunity to adduce evidence in the matter. The court below shall consider the question of maintainability along with other issues, as

questions on facts are also involved. The court below shall consider the matter quite untrammelled by any of the observations made by the court below in Exts.P4 and P5. Being a matter of 2012, the court below shall dispose of the matter, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge