

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

OP(C).No. 1814 of 2015 (O)

(I.A.NO.4918/2014 IN O.S.NO.842/2014 OF I ADDL.MUNSIFF COURT, ERNAKULAM)

PETITIONER(S):

1. P.V.SATHYAMURTHY, AGED 54 YEARS,
S/O. LATE P.N.VASUDEVA RAO, RESIDING AT FLAT NO.5 D,
SANGETHAM APARTMENTS, ATLANTIS JUNCTION,
KOCHI-682 015
2. P.V MURAHARIRAO, AGED 66 YEARS,
S/O. LATE P.N.VASUDEVARAO, RESIDING AT HOUSE NO.153,
SCHOOL ROAD, SOUTH GIRINAGAR, KOCHI -682 020

**BY ADVS.SRI.C.T.JOSEPH
SRI.JOE POLLAYIL
SRI.ROSHIN IPE JOSEPH**

RESPONDENT(S):

1. P.V.SURESH, AGED 56 YEARS,
S/O. LATE P.N.VASUDEVARAO, SRIVALSAM, CC 16/926A,
THOPPUMPADY, KOCHI -682 005
2. MRS. H.T.THULASI, AGED 60 YEARS, D/O. LATE P.N.VASUDEVA RAO,
SREELAKSHMI NIVAS, NEAR GUDDASALA, ASHOK NAGAR,
URVASTORE, MANGLORE -575 006, KARNATAKA.
3. MRS. SAROJAACHARYA, AGED 59 YEARS,
D/O. LATE P.N.VASUDEVA RAO, RESIDING AT HOUSE NO.4,
ACHARYA GARDEN, NEAR CHARAKA BLOCK, MANIPAL,
UDUPI, PIN -576 119, KARNATAKA.
4. P.S.SRINIVAS, AGED 45 YEARS,
S/O. SREEDHARAN EMBRANTHIRI, 48/506B, "SITARAM",
NEAR BHAVANSVIDHYAMANDIR, DESHABHIMANI ROAD,
ELAMAKKARA, EDAPPALLY, ERNAKULAM- 682 026
5. P.S.RAMACHANDRAN ALIAS SUNIL, AGED 33 YEARS,
S/O. SREEDHARAN EMBRANTHIRI, 48/506, "SITARAM",
NEAR BHAVANSVIDHYAMANDIR, DESHABHIMANI ROAD,
ELAMAKKARA, EDAPPALLY, ERNAKULAM -682 026

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6. JAYALAKSHMI, AGED 69 YEARS,
W/O. SREEDHARANEMBRANTHIRI, 48/506, "SITARAM",
NEAR BHAVANSVIDHYAMANDIR, DESHABHIMANI ROAD,
ELAMAKKARA, EDAPPALLY, ERNAKULAM- 682 026

R1 BY ADVS. SRI.DINESH R.SHENOY

SMT.K.K.JYOTHILAKSHMY

R4 BY SRI.K.GOPALAKRISHNA KURUP,SENIOR ADVOCATE
ADV. SRI.ABHISHEK KURIAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE PLAINT FILED IN O.S NO.842/2014 ON THE FILES OF THE HON'BLE MUNSIFF'S COURT, ERNAKULAM
- EXHIBIT P2 TRUE COPY OF THE PLAINT FILED IN O.S NO 392/2013 ON THE FILES OF THE HON'BLE SUBORDINATE JUDGE'S COURT, ERNAKULAM
- EXHIBIT P3 TRUE COPY OF THE PLAINT IN O.S NO.714/2006 ON THE FILES OF THE SUBORDINATE JUDGE'S COURT, ERNAKULAM
- EXHIBIT P4 TRUE COPY OF THE PRELIMINARY DECREE DATED 24-08-2007 PASSED IN O.S NO.714/2006 ON THE FILES OF THE HON'BLE SUBORDINATE JUDGE'S COURT, ERNAKULAM
- EXHIBIT P5 TRUE COPY OF THE FINAL DECREE DATED 24-05-2008 PASSED IN I.A NO.2652/2008 IN O.S NO.714/2006 ON THE FILES OF THE HON'BLE SUBORDINATE JUDGE'S COURT, ERNAKULAM
- EXHIBIT P6 TRUE COPY OF THE APPLICATION FOR IMPEADING FILED AS I.A NO 4918/2014 IN O.S NO.842/2014 BEFORE THE HON'BLE MUNSIFF'S COURT, ERNAKULAM
- EXHIBIT P7 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENTS 1 TO 3 IN I.A.NO.4918/2014 IN O.S NO 842/2014 BEFORE THE HON'BLE MUNSIFF'S COURT, ERNAKULAM.
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 11/3/2015 PASSED IN I.A.NO.4918/2014 IN O.S.NO.842/2014 BEFORE THE HON'BLE MUNSIFF'S COURT, ERNAKULAM

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. ABRAHAM MATHEW, J.

O.P.(C)No.1814 of 2015

Dated this the 30th day of November, 2015

J U D G M E N T

Parties to this OP are parties in OS.392 of 2013 on the file of Sub Court, Ernakulam and some of the parties in this OP are parties in OS.842 of 2014 on the file of Munsiff Court, Ernakulam. The properties involved in these suits belonged to the father of one Sumathy. On his death Sumathy filed OS.714 of 2006 on the file of Sub Court, Ernakulam for partition. A preliminary decree was passed in her favour. Immediately thereafter she died. Some of her children claiming that they are entitled to the share allotted to Sumathy on the basis of a settlement deed allegedly executed by her, filed a compromise petition along with the other parties to the suit. Accordingly final decree was passed. The children of Sumathy who were excluded from the compromise filed OS.392 of 2013 to declare that the final decree is not valid and the property of Sumathy is liable to be partitioned. Nephews of

Sumathy are said to be in possession of her property. The children who claimed to have obtained the property of Sumathy as per the settlement deed allegedly executed by her filed OS.842 of 2014 against the nephews of Sumathy for their eviction. The plaintiffs in OS.392 of 2013 filed Ext.P6 impleading application in OS.842 of 2014. By Ext.P8 order the trial court has dismissed it.

2. This is challenged. There is no doubt that the petitioners in this OP are interested in the subject matter of OS.842 of 2014. But the learned counsel for the respondents 1 and 2 who are the defendants in OS.392 of 2013 submits that the impleadment will cause embarrassment of the trial and will enable the petitioners to raise contentions which are beyond the scope of the suit. That may be true, but the fact that the petitioners in this OP are interested in the out come of OS.842 of 2014 cannot be denied. In these circumstances I think a direction that OS.842 of 2014 shall be taken up only after the disposal of OS.392 of 2013 is sufficient.

In the result this OP is disposed of with a direction to the trial court not to take up for trial O.S.842 of 2014 till

OS.392 of 2013 on the file of Sub Court, Ernakulam is disposed of.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge