

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

OP(C).No. 719 of 2014 (O)

IA.NO.2490/2013 IN OS 89/2007 OF SUB COURT, KOTTARAKKARA.
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PETITIONER:

**SALIM T.NINAN, AGED 51 YEARS,
S/O.LATE THOMAS NINAN, CHERUKARA NO.7,
THINKALKARICKOM VILLAGE, PATHANAPURAM TALUK.**

BY ADV. SRI.B.PRAMOD

RESPONDENT(S):

- 1. SALI ALEX NINAN, W/O.ALEX NINAN,
CHERUKARA AMBATTU BUNGLAVU,
THINKALKARICKOM VILLAGE, PATHANAPURAM TALUK.**
- 2. THANKOM PRAKASH, D/O.ALEX NINAN,
CHERUKARA AMBATTU BUNGLAVU,
THINKALKARICKOM VILLAGE, PATHANAPURAM TALUK.**
- 3. REENA ROSHAN, D/O.ALEX NINAN,
CHERUKARA AMBATTU BUNGLAVU,
THINKALKARICKOM VILLAGE, PATHANAPURAM TALUK.**
- 4. SARA RAJAN, D/O.ALEX NINAN,
CHERUKARA AMBATTU BUNGLAVU
THINKALKARICKOM VILLAGE, PATHANAPURAM TALUK.**
- 5. P.A.MARIKUTTY, W/O.GEORGE, NETTIYATTUPARAMBIL,
CHANDANAKAVU, KULATHUPUZHA MURI,
KULATHUPUZHA VILLAGE.**
- 6. THANKACHAN, S/O.UMMAN CHERIAN,
THENGAZHIKATHU PUTHENVEETIL,
AMBALAKKARA MURI, UMMANNOOR VILLAGE.**
- 7. ACHANKUNJU, S/O.GHEVARGHESE,
PLAVILA PUTHENVEETIL, CHANDANAKAVU,
KULATHUPUZHA MURI, KULATHUPUZHA VILLAGE.**

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8. EALIKUTTY, W/O.ACHANKUNJU,
PLAVILA PUTHENVEETIL, CHANDANAKAVU,
KULATHUPUZHA MURI, KULATHUPUZHA VILLAGE.
9. ABDUL MAJEED, S/O.KADIRUVAPPU,
PLAVILA PUTHENVEED, NELLIMOODU KARA,
KULATHUPUZHA P.O., KULATHUPUZHA VILLAGE.
10. LEELAMMA VARGHESE, D/O.VARGHESE,
PUTHUPARAMBIL HOUSE, NELLIMOODU KARA,
KULATHUPUZHA P.O., THINKALKARICKOM VILLAGE.
11. JOHNY, S/O.MATHAI, BIJU BHAVAN, CHEMMANNOOR MURI,
PUNALUR VILLAGE, PATHANAPURAM TALUK.

R1 BY ADVS. SRI.P.VIJAYAKUMAR
SRI.C.R.REGHUNATHAN
SRI.M.V.ASHIM
SRI.B.HARRYLAL
SRI.R.BALAKRISHNAN
SRI.SUVIN.R.MENON
R9 & R10 BY ADV. SRI.M.SREEKUMAR
R11 BY ADV. SRI.P.VIJAYAKUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

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APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE PLAINT IN OS.NO.89/07 ON THE FILE OF THE SUB COURT, KOTTARAKKARA.

EXHIBIT P2 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS IN OS.NO. 89/07 ON THE FILE OF THE SUB COURT, KOTTARAKKARA.

EXHIBIT P3 : TRUE COPY OF THE RELEASE DEED DATED 21-11-1995.

EXHIBIT P4 : TRUE COPY OF THE IA.NO. 2490/2013 IN OS.NO.89/2007 ON THE FILE OF THE SUB COURT, KOTTARAKKARA.

EXHIBIT P5 : TRUE COPY OF THE WRITTEN OBJECTION FILED BY THE RESPONDENTS IN IA.NO. 2490/2013 IN OS.NO. 89/07 ON THE FILE OF THE SUB COURT, KOTTARAKKARA.

EXHIBIT P6 : TRUE COPY OF THE ORDER 4-1-2014 IN IA.NO. 2490/2013 IN OS.NO. 89/2007 ON THE FILE OF THE SUB COURT, ALAPPUZHA.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P. BHAVADASAN, J.

O.P.(C). No. 719 of 2014

Dated this the 22nd day of January, 2015.

JUDGMENT

Ext.P4 petition filed by the plaintiff in the suit to implead his sister as an additional plaintiff on the basis of the counter affidavit filed by the defendants was dismissed by the court below on the ground that there is nothing to show that she was either aware of or she had given her consent to come on record as additional plaintiff.

2. The suit was one for declaration of title and possession. It is pointed out by the petitioner before the court below that the property originally belonged to the father of the plaintiff and on his death, it devolved on his mother, himself and his sister. His sister executed a release deed in favour of her mother and plaintiff. The mother later executed a document in respect of a portion of the property procured by her. Consequent on the death of the mother,

according to the petitioner, going by the law of succession, daughter becomes entitled to a share and therefore, he thought it appropriate to bring her on the party array and on that basis filed a petition for impleading the sister as additional plaintiff.

3. The petition was very strongly resisted by the defendants by pointing out that there is nothing to show that the person who is sought to be impleaded has consented for being included in the party array as additional plaintiff or had even knowledge of the pendency of the suit. There was nothing to show that she has authorised the plaintiff to get her impleaded in the suit. It is pointed out that there is nothing to indicate that she is even aware of the proceedings. They also contended that it would have been a different matter had the plaintiff sought to bring her in the party array as additional defendant. This petition, without anything more to show that she was aware of the proceedings or she had given consent, cannot be entertained.

4. The contention raised by the respondent found favour with the court below and the court below dismissed the application and that is under challenge.

5. Learned counsel appearing for the petitioner pointed out that it is in order to avoid future controversy that he sought to bring in his sister as additional plaintiff and there is no reason why the petition should not be allowed.

6. Learned counsel appearing for the respondents on the other hand relying on the relevant provisions of the Code of Civil Procedure and Civil Rules of Practice contended that it is incumbent on the part of the person sought to be brought in to give his consent and the court has a duty to ensure that consent has been obtained from the person concerned. There is no such exercise in the case on hand and referring to the affidavit in support of the petition for impleading the sister as additional plaintiff, it is contended that there is no whisper that she has consented to bring in her on records as additional plaintiff.

7. After having heard learned counsel appearing on both sides, it is felt that there is considerable force in the submission made by the learned counsel for the respondents. As rightly pointed out by the learned counsel, there is no whisper in the affidavit in support of the impleading petition that either the person concerned authorised the plaintiff or she has consented to array her in the party array as additional plaintiff. As rightly pointed out by the learned counsel for the respondents, the matter would have been different had it been a case where she was sought to be brought in the party array as additional defendant in which case notice would have been gone. There is nothing to show that the person who is sought to be brought in the party array was aware that she is sought to be arrayed as a party. The petition is certainly defective going by the provisions pointed out by the learned counsel for the respondents. The court below was therefore perfectly justified in dismissing the petition.

However, this will not preclude the petitioner from filing proper petitions contending for the position that on the death of the mother, in view of Ext.P3, sister becomes a co-owner of the property and in order to avoid future controversy, in the interests of all she be brought in the party array. If any such petition is filed, the court below will consider the same in accordance with law untrammelled by any observation contained in this judgment.

This Original Petition is disposed of as above.

sb.

P. BHAVADASAN,
JUDGE