

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

OP(C).No. 1224 of 2010 (O)

(OS 201/2006 of SUB COURT, NEYYATTINKARA)

PETITIONER:

FLOATELS INDIA PRIVATE LTD., A PRIVATE COMPANY
REGD. UNDER THE INDIAN COMPANIES ACT AND HAVING ITS
OFFICE AT B3, PRS SANGEETHA APARTMENTS, THYCAUD,
THIRUVANANTHAPURAM &, REP. BY ITS MANAGING DIRECTOR,
M.R.NARAYANAN S/O., M.S.RAMAKRISHNAN, B3,
PRS SANGEETHA APARTMENTS, THIRUVANANTHAPURAM.

BY ADVS.SRI.V.SURESH
SRI.G.SUDHEER

RESPONDENTS:

1. M/S. RADISON ISLAND AYURVEDIC RESORTS
POOVAR PVT.LTD.HAVING ITS REGD.OFFICE AT PARUTHIYOOR,
POZHIYOOR DESOM, POZHIYOOR P.O., NEYYATTINKARA
THIRUVANANTHAPURAM, AND REP.BY ITS MANAGING
DIRECTOR A.SAMBASIVAN, S/O.ARAVINDAKSHA
PANICKER, R/AT SARASREE, UCHAKKADA PO.
KULATHOOR DESOM, KULATHOOR VILLAGE, NEYYATTINKARA
TALUK, THIRUVANANTHAPURAM DISTRICT - 695 018.
2. A.SAMBASIVAN, S/O. ARAVINDAKSHA PANICKER,
R/AT SARASREE, UCHAKKADA P.O.,
KULATHOOR DESOM, KULATHOOR VILLAGE
NEYYATTINKARA TALUK
THIRUVANANTHAPURAM DISTRICT-695 018.
3. SMT.REMAKUMARI, W/O. SAMBASIVAN,
R/AT SARASREE, UCHAKKADA P.O., KULATHOOR DESOM
KULATHOOR VILLAGE, NEYYATTINKARA-695 018.
4. SMILE DIRECT RESORT PVT.LTD., A COMPANY
RETD.UNDER THE COMPANIES ACT, HAVING ITS REGD.OFFICE
AT PARUTHIYOOR, POZHIYOOR P.O., KULATHUR VILLAGE
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT -
695 018, REP.BY ITS MANAGING DIRECTOR DEAN, THOMAS
STEPNEY, S/O.THOMAS STEPNEY, R/AT CB-4, 101 MILTON
ROAD, CAMBRIDGE, ENGLAND, UNITED KINGDOM.

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5. DEAN THOMAS STEPNEY, S/O.THOMAS STEPNEY,
RESIDING AT CB-4, 101 MILTON ROAD
CAMBRIDGE, ENGLAND, UNITED KINGDOM.
6. R.G.GIRIPRASAD, S/O. RAGHAVAN,
PARVATHI NIVAS, PLAVUNINNAVILA, POOVAR P.O.
THIRUPURAM VILLAGE, NEYYATTINKARA
THIRUVANANTHAPURAM-695 018.
7. RAJESH, S/O. PRABHAKARAN,
MONICKAL NIVAS, UDIYANKULANGARA, KOLLAYIL VILLAGE
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT.
8. BEENA MURUGAN, W/O. MURUGAN,
MURUGAVILASOM BUNGALOW, MARYAPURAM P.O.
CHENKAL VILLAGE, CHENKAL DESOM, NEYYATTINKARA
VILLAGE, THIRUVANANTHAPURAM-695 018.

R2 BY ADV. SRI.RAM MOHAN.G.

R2 BY ADV. SRI.G.P.SHINOD

R2 BY ADV. SRI.MANU V.

R2 BY ADV. SRI.P.GOVIND

R6 BY ADV. SRI.R.GOPAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS:

- EXT. P1 : COPY OF PLAINT IN O.S.201/2006 FILED BY PETITIONER BEFORE SUB COURT, NEYYATTINKARA DTD.8.12.2006.
- EXT. P2 : COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 1 TO 3 IN O.S.201/2006 BEFORE SUB COURT, NEYYATTINKARA DTD. 1.6.2007.
- EXT. P3 : COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 4 TO 6 IN O.S.201/2009 BEFORE SUB COURT, NEYYATTINKARA DTD. 28.6.2007.
- EXT. P4 : COPY OF SALE AGREEMENT DTD.14.2.2006 EXECUTED BY RESPONDENTS 1 TO 3 TO THE PETITIONER.
- EXT. P5 : COPY OF AGREEMENT FOR SALE DTD.29.6.2006 EXECUTED BETWEEN A.SABASIVAN AND M.R. NARAYANAN.
- EXT. P6 : COPY OF PLAINT O.S.145/2009 FILED BY M.R.NARAYANAN BEFORE SUB COURT, NEYYATTINKARA DTD.17.6.09.
- EXT. P7 : COPY OF WRITTEN STATEMENT IN O.S.145/2009 FILED BY SAMBASIVAN BEFORE SUB COURT, NEYYATTINKARA.
- EXT. P8 : COPY OF SALE DEED No.1563/2009 DTD.19.8.2009 EXECUTED BY RESPONDENTS 2 AND 3 IN FAVOUR OF 7TH RESPONDENT.
- EXT. P9 : COPY OF PLAINT O.S.200/2006 FILED BY RAJESH @ MONI BEFORE SUB COURT, NEYYATTINKARA DTD.15.12.2006.
- EXT. P10 : COPY OF WRITTEN STATEMENT IN O.S.200/2006 FILED BY SAMBASIVAN & OTHERS BEFORE SUB COURT, NEYYATTINKARA DTD.28.6.07.
- EXT. P11 : COPY OF JUDGMENT IN O.S.200/2006 DTD.23.8.2007 BEFORE SUB JUDGE, NEYYATTINKARA.
- EXT. P12 : COPY OF PLAINT O.S.321/2008 BEFORE MUNSIF COURT, NEYYATTINKARA FILED BY RESPONDENTS 4 TO 6 AGAINST R7.
- EXT. P13 : COPY OF WRITTEN STATEMENT IN O.S.321/2008 BEFORE MUNSIF COURT, NEYYATTINKARA FILED BY R7.

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- EXT. P14 : COPY OF JUDGMENT DTD.26.6.08 IN O.S.321/08 PASSED BY PRINCIPAL MUNSIFF COURT, NEYYATTINKARA.
- EXT. P15 : COPY OF IMPEADING PETITION FILED BY PETITIONER AS I.A.75/2010 IN O.S.201/2006.
- EXT. P16 : COPY OF AMENDMENT PETITION FILED BY PETITIONER AS I.A.77/2010 IN O.S.201/2006 BEFORE SUB COURT, NEYYATTINKARA.
- EXT. P17 : COPY OF JUDGMENT DTD.1.2.2010 IN WP(c) 3245/2010 PASSED BY THIS COURT.
- EXT. P18 : COPY OF OBJECTION FILED BY RESPONDENTS 1 TO 3 IN O.S.201/2006 BEFORE SUB COURT, NEYYATTINKARA.
- EXT. P19 : COPY OF IMPEADING PETITION AS I.A.1787/2010 IN O.S.201/2006 FILED BY PETITIONER DTD.7.4.2010.
- EXT. P20 : COPY OF COMMON ORDER DTD.14.10.2010 IN I.A.75/2010, I.A.77/2010, I.A.1787/2010 IN O.S.201/2006 DTD. 14.10.2010.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P. BHAVADASAN, J.

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Dated this the 8th day of June, 2015.

JUDGMENT

Shorn off unnecessary details, the issue raised in this Original Petition is regarding the dismissal of an impleading petition filed by the plaintiff in O.S. 201 of 2006 in respect of those persons who were pendente lite transferees.

2. The suit was one for specific performance of an agreement between the plaintiff and respondents 1 to 3. It came out that prior to the suit respondents 1 to 3 had sold a portion of the property to respondents 4 and 5 and they were sought to be impleaded. When they were sought to be impleaded, they came forward with a plea that they had transferred the property to the seventh respondent and therefore the petitioner filed I.A. 75 of 2010 to implead the subsequent transferee. On his appearance, he stated that he has transferred the property to yet another person and

therefore the petitioner was constrained to file I.A. 1787 of 2010 to implead the subsequent transferee.

3. Wonderfully enough the court below relying on Order 1 Rule 10 of the Code of Civil Procedure dismissed the petition saying that impleadment is not possible.

4. Less said the better about the order. The court below at least should have noticed that the petitions are filed under Order XXII Rule 10 of C.P.C. which enables the petitioner to bring on record the pendente lite transferee. It is one thing to say that it is not necessary to bring the subsequent transferees and it is quite another thing to say that they cannot be brought on the party array. The order obviously cannot be sustained in law.

In the result, this Original Petition is allowed, the order impugned is set aside and the impleading petitions are allowed subject to the

condition that if any question of limitation arises, the respondents are free to raise it at the appropriate time. Needless to say, if the additional respondents so choose, they will be allowed to file their written statements. Consequent amendments also stand allowed.

sb.

P. BHAVADASAN,
JUDGE