

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

OP(C).No. 2070 of 2015 (O)

(O.S.NO.405/2006 OF MUNSIFF'S COURT, CHENGANNUR)

PETITIONER(S)/COUNTER PETITIONERS/1 & 2:

1. OOMMAN CHACKO,
ELANKATHUR HOUSE, ERATHU MURI, VENMONY VILLAGE,
CHENGANNUR TALUK, ALAPPUZHA DISTRICT, VENMONY P.O.,
PIN-689 509.

2. VARGEHESE KOSHY,
ALUMMOOTIL HOUSE, ERATHU MURI, VENMONY VILLAGE,
CHENGANNUR TALUK, ALAPPUZHA DISTRICT, VENMONY P.O.,
PIN-689 509.

BY ADVS.SRI.P.S.KRISHNA PILLAI
SMT.S.ANJUSHA

RESPONDENT(S):

1. ABRAHAM,
MADAPLATHU THAKKETHIL, ERATHU MURI, VENMONY VILLAGE,
CHENGANNUR TALUK, ALAPPUZHA DISTRICT, VENMONY P.O.,
PIN-689 509.

2. GRACY MATHEW,
MADAPLATHU THEKKETHIL, ERATHU MURI, VENMONY VILLAGE,
CHENGANNUR TALUK, ALAPPUZHA DISTRICT, VENMONY P.O.,
PIN-689 509.

BY ADV. SRI.KOSHY GEORGE (CATEATOR)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 2070 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF THE JUDGMENT DTD. 26.7.2007 IN RSA NO.496 AND 498 OF 2007.
- P2 : COPY OF THE AFFIDAVIT DTD. 29.9.07 IN IA NO.1739/07 IN OS NO.405/06 OF MUNSIFF'S COURT, CHENGANNUR.
- P2(A): COPY OF THE PETITION IN IA 1739/07, IN OS NO.405/06 OF MUNSIFF'S COURT, CHENGANNUR, DTD. 29.9.07.
- P3 : COPY OF AFFIDAVITG DTD. 9.8.12 IN IA NO.1181/12 IN OS NO.405/06 OF THE MUNSIFF'S COURT, CHENGANNUR.
- P3(A): COPY OF THE PETITION DTD. 9.8.12 IN IA NO.1181/12 IN OS NO.405/06 OF THE MUNSIFF'S COURT, CHENGANNUR.
- P3(B): COPY OF THE STATEMENT OF COUNTER CLAIM ACCOMPANYING IA NO.1181/12 IN OS NO.405/06 OF THE MUNSIFF'S COURT, CHENGANNUR.
- P4 : COPY OF THE AFFIDAVIT DTD. 29.5.14 IN IA NO.738/14 IN OS NO.405/06 OF THE MUNSIFF'S COURT, CHENGANNUR.
- P4(A): COPY OF THE PETITION DTD. 29.5.14 IN IA NO.738/14 IN OS NO.405/06 OF THE MUNSIFF'S COURT, CHENGANNUR.
- P5 : COPY OF JUDGMENT/REMAND ORDER DTD. 4.4.2014 IN OPC NO.2064/2013.
- P6 : COPY OF ORDER DTD. 31.3.2015 IN IA NO.1321/12 IN OS NO.405/06 OF THE MUNSIFF'S COURT, CHENGANNUR.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

O.P.(C) No.2070 of 2015

Dated this the 3rd day of September, 2015

JUDGMENT

Petitioners are defendants in O.S.No.405/2006 on the file of the Munsiff's Court, Chengannur, have approached this Court aggrieved by an order excluding counter claim filed by them under Order VIII Rule 6 C of the Civil Procedure Code. The petitioners point out that he has filed an I.A.No.738/2014 to correct the counter claim. That application is pending. Therefore, it is submitted that the order passed under Order VIII Rule 6 C of the Civil Procedure Code is illegal. This Court obtained a report through the registry from the Munsiff, Chengannur as regards the pendency of the above IA. It is now submitted that the above IA is pending.

In that view of the matter, this Court is of the view that the court below ought not to have passed an order under Order VIII Rule 6 C of the Civil Procedure Code especially when I.A.No.738/2014 has not been disposed of. Therefore, the impugned order is set aside and remitted back to the court below to consider along with I.A.No.738/2014. Needless to say that the court below shall follow the directions of this Court in Ext.P5 judgment.

The original petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

In