

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

OP(C).No. 2133 of 2015 (O)

(I.A.NO.2144/2015 IN OS.NO. 523/2014 OF PRINCIPAL MUNSIFF'S COURT, KOTTAYAM)

PETITIONER(S)/PETITIONERS/DEFENDANTS 3 & 4 :

**1. MAMMEN MATHEW, CHIEF EDITOR,
MALAYALA MANORAMA DAILY, KOTTAYAM.**

**2. PHILIP MATHEW, MANAGING EDITOR,
MALAYALA MANORAMA DAILY, KOTTAYAM.**

**BY SMT.SUMATHY DANDAPANI,SENIOR ADVOCATE
ADV.SRI.MILLU DANDAPANI**

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS, DEFENDANTS 1,2 AND 6 :

**1. SUNIL KUMAR,S/O. LATE M.P GOVINDAN NAIR,
PUTHUPARAMBIL HOUSE,OMANNIL BHAGOM,
P.C KAVALA, PAIPPADU VILLAGE,
CHANGANACHERY- 690 556**

**2. BINDU SUNIL KUMAR,W/O. SUNIL KUMAR,
PUTHUPARAMBIL HOUSE, OMANNIL BHAGOM,
P.C KAVALA, PAIPPADU VILLAGE, CHANGANACHERY -690 556**

**3. SULEKHA,W/O. UDAYAKUMAR,
USHA SADANAM, P.C KAVALA,
PAIPPADU VILLAGE, CHANGANACHERY -690 556**

**4. PRASANTHAKUMAR,S/O. UDAYAKUMAR,
USHA SADANAM, P.C KAVALA,
PAIPPADU VILLAGE, CHANGANACHERY- 690 556**

**5. DEEPU RAVI,
CHIEF EDITOR, KERALA KAUMUDI OFFICE, PETTA,
THIRUVANANTHAPURAM- 695 023**

**6. M.S RAVI, DIRECTOR,
KERALA KAUMUDI PRIVATE LIMITED, PETTA,
THIRUVANANTHAPURAM - 695 023**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 2133 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1 A TRUE COPY OF THE PLAINT DATED 07/07/2014 IN O.S 523/2014 FILED
BY THE RESPONDENTS 1 & 2 PLAINTIFFS**

**EXHIBIT P2 A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
PETITIONERS/DEFENDANTS 3 & 4 DATED 22/11/2014 IN O.S 523/2014**

**EXHIBIT P3 A TRUE COPY OF I.A NO 2144/2015 IN O.S NO 523/2014 FILED BY THE
PETITIONERS**

**EXHIBIT P4 A TRUE COPY OF THE ORDER DATED 17/08/2015 OF THE LEARNED
PRINCIPAL MUNSIFFS COURT, KOTTAYAM IN I.A NO.2144/2015 IN O.S
NO. 523/2014**

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

O.P.(C) No.2133 of 2015

Dated this the 4th day of September, 2015

JUDGMENT

Petitioners are defendants 3 and 4 in a suit for damages. The petitioners raised a preliminary issue as to the mis-joinder of cause of action. This preliminary issue was heard separately. The court below vide order dated 17.8.2015 dismissed the application filed by the petitioners raising objection based on mis-joinder.

2. Learned senior counsel appearing for the petitioners submits that the court below erred in not advertng to the petitioners objection based on misjoinder.

3. In fact, after hearing the learned senior counsel, this Court is of the view that essentially the mis-joinder allegation projected by the petitioner is based on the facts involved. It is to be noted that the suit is filed alleging malicious publication based on the complaint lodged by respondents 3 and 4.

4. Petitioners are the Chief Editor and the Managing Editor of the publication of a daily. The cause of action as against the publisher as well as the third respondent are according to the

learned senior counsel is different and cannot be joined or united in the suit.

This Court is of the view that though the court below tried the issue as the preliminary issue, it is open for the court below to examine the issue during trial after adducing evidence. In fact, the court below refused to hear the question as to the misjoinder of cause of action as the preliminary issue. I do not find any infirmity with the order and certainly, the court below shall consider the issue relating to misjoinder along with the issues in the trial.

With the above observations, this original petition is disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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