

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP(C).No. 1169 of 2014 (O)

I.A.NO.1358/12 IN A.S.NO.102/12 OF SUB COURT, KARUNAGAPPALLY

ORIGINAL PETITIONER/PETITIONER/APPELLANT:

MAHILAMONY,
AJITH BHAVAN, EDAVATTOM MURI, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA TALUK.

BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN

RESPONDENTS/COUNTER PETITIONERS 1 & 2 AND 4 TO
11/RESPONDENTS:

1. NALINI,
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624.

2. MANOHARAN,
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624.

3. VASANTHI,
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624.

4. PRAMEELA,
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM, VILLAGE - 691 624

5. PREETHA,
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624.

6. PRASEETHA,
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624.

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7. RAMANI,DEVASADANAM,EDAVATTOM MURI,
PAVITHRESWARAM VILLAGE - 691 624.

8. PRAMEELA,
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624.

9. MANU (MINOR),
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624.

10. MAYA (MINOR),
CHARUVILA VEEDU, MARNANADU EAST MURI,
PAVITHRESWARAM VILLAGE - 691 624

(MINORS REPRESENTED BY THEIR MOTHER 8TH DEFENDANT)

R2 BY ADV. SRI.M.R.SAJITH PANICKER

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/24/8/15

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APPENDIX

PETITIONER'S EXHIBITS :

EXT.P-1: COPY OF THE PLAINT IN O.S.NO.478/01 ON THE FILE
OF THE MUNSIFF'S COURT, KOTTARAKKARA.

EXT.P-2: COPY OF JUDGEMENT DATED 28.11.2003 IN OS
NO.478/01 ON THE FILE OF THE MUNSIFF'S COURT, KOTTARAKKARA.

EXT.P-3: COPY OF COMMISSION REPORT, MAHAZAR AND ROUGH
SKETCH.

EXT.P-4: COPY OF IA NO.1358/12.

EXT.P-5: COPY OF ORDER DATED 12.2.2013 IN IA NO.1358/12 IN
AS NO.102/12.

RESPONDENTS' EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/24/8/15

B.KEMAL PASHA, J.

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O.P.(C). No.1169 of 2014

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Dated this the 18th day of August, 2015

J U D G M E N T

The petitioner is the plaintiff in a suit for declaration of title and possession, injunction, and partition. The suit remained unopposed before the trial court. All the defendants were set exparte. Even after that, the trial court has chosen to dismiss the suit on the reason that better reliefs were not sought for within the meaning of Section 34 of the Specific Relief Act. Challenging the judgment and decree, an appeal has been filed. In the appeal, Exhibit P4 I.A.No.1358 of 2012 was filed seeking amendments for

incorporating the relief of recovery of possession etc. It seems that some minor amendments merely based on the existing pleadings in the plaint were sought for. The appellate court has chosen to dismiss the I.A. through Exhibit P5 order. The same is under challenge.

2. Heard the learned counsel for the petitioner and the learned counsel for the contesting respondents.

3. It seems that the court below has not chosen to hear the appeal on merits. When Exhibit P4 I.A. was filed before the appellate court sitting in first appeal, the appellate court ought to have considered Exhibit P4 I.A. along with the appeal. The court below ought to have considered the necessity for an amendment on hearing the I.A along with the appeal. It seems that the court below has taken out Exhibit P4 I.A. alone, heard it, and has chosen to dismiss it. The entire matters require re-consideration, for which Exhibit P5 order has to be set aside.

In the result, this Original Petition (Civil) is allowed and Exhibit P5 order stands set aside. The I.A. is revived. The

court below shall consider Exhibit P4 I.A. along with the appeal on merits and pass orders on Exhibit P4 in accordance with law.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/18/8/15