

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

OP(C).No. 2423 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN IA.NO.1347/2014 IN OS 673/2012 of SUB
COURT, KANNUR

PETITIONER(S)/PLAINTIFFS IN OS.NO.669/2012 & OS.673/2012:

1. MUKKANAKKIL PUTHIYA PURAYIL UMMAR AGED 40 YEARS
S/O.MUAMMED, MUKKANAKKIL HOUSE, PO.KANNADIPPARAMBA
KANNADIPPARAMBA AMSOM, PULLOOPPI DESOM, KANNUR TALUK
KANNUR DISTRICT
2. KANIYARAKKAL NADUVILE VALAPPIL MUHAMMED KUNHI,
AGED 40 YEARS
S/O.PALLEERAN, KANIYARAKKAL NADUVILE VALAPPIL HOUSE
KANNADIPARAMBA AMSOM, PULLUPPI DESOM, KANNUR DISTRICT
3. THAMSEER HUSSAIN
S/O.HUSSAIN, P.O.KANNADIPPARAMBA
KANNADIPPARAMBA AMSOM, MALOTT DESOM, KANNUR TALUK
KANNUR DISTRICT

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT(S)/DEFENDANTS IN OS.NO.669/2012 & OS.NO.673/2012:

1. PUTHIYA PURAYIL JAYARAJAN, AGED 67 YEARS
S/O.KUNHIRAMAN, PUTHIYAPURAYIL HOUSE, ELAYAVOOR AMSOM
MUNDAYAD DESOM, P.O.CHOWA, KANNUR TALUK
KANNUR DISTRICT 670006
2. PARETHINGAL VASUDEVAN, AGED 64 YEARS
S/O.KUTTAN, 'ARADHARA', P.O.CIVIL STATION
KANNUR DISTRICT 670002
3. EDAKKADANBETH POOKANDY GOPALAKRISHNAN
S/O.KANNA, POOKKANDY HOUSE, P.O.EDAYANNUR
KANNUR DISTRICT 670595
4. KELOTH SUJITHA, AGED 41 YEARS
W/O.GOPALAKRISHNAN, POOKKANDY HOUSE, P.O.EDAYANNUR
KANNUR DISTRICT 670595
5. C.V.PREMAVALLY
W/O.VASUDEVAN, ARADHANAN, P.O.CIVIL STATION
KANNUR DISTRICT 670002

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**6. P.SUJITH, AGED 45 YEARS
S/O.VASUDEVAN, ARADHANAN, P.O.CIVIL STATION
KANNUR DISTRICT 670002**

**7. P.SAJITH, AGED 38 YEARS
S/O..VASUDEVAN, ARADHANAN, P.O.CIVIL STATION
KANNUR DISTRICT 670002**

R1-R7 BY ADV. SRI.K.V.SOHAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1:TRUE COPY OF THE PLAINT IN OS.NO.669/2012 BEFORE THE SUB COURT, KANNUR DATED 30.12.2012

EXHIBIT.P2:THE TRUE COPY OF THE PLAINT IN OS.NO.673/2012 BEFORE THE SUB COURT, KANNUR DATED 30.12.2012

EXHIBIT.P3:THE TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF THE PETITION IN IA.NO.1347/2014

EXHIBIT.P4:THE TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENTS IN IA.NO.1347/2014 DATED 12.08.2014

EXHIBIT.P5:THE TRUE COPY OF THE ORDER DATED 10.07.2015 IN IA.NO.1347/2014 IN OS.NO.673/2012 OF THE SUB COURT, KANNUR

EXHIBIT.P6:THE TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF IA.NO.1348/2014

EXHIBIT.P7:THE TRUE COPY OF THE COUNTER STATEMENT IN IA.NO.1348/2014

EXHIBIT.P8:THE TRUE COPY OF THE ORDER DATED 10.07.2015 IN IA.NO.1348/2014 IN OS.NO.673/2012 OF THE SUB COURT, KANNUR

RESPONDENTS' EXHIBITS: NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.2423 of 2015

Dated this the 13th day of November, 2015

J U D G M E N T

Petitioners are the plaintiffs in OS.669 fo 2012 and 673 of 2012 of Sub Court, Kannur. Both suits are for specific performance of an agreement for sale. In both suits the defendants are not the same and the properties are also not the same. The petitioners filed an application for joint trial of the two suits. By Ext.P5 order the learned Sub judge has dismissed it. They also filed Ext.P6 application in OS.673 of 2012 to appoint a commissioner to inspect the plaint schedule properties in both suits. The learned Sub Judge has dismissed both applications. These orders are challenged.

2. Heard.

3. Joint trial of cases depends upon the facts of the cases involved. There is no statutory provision for it. Consolidation of suits is done under Section 151 C.P.C. In these suits the only common factor is that the petitioners are the plaintiffs. The properties are different. The defendants are different. The agreements are different.

Joint trial of the two suits will embarrass the trial. Merely because the relief prayed for in both suits are same joint trial cannot be ordered. So the learned Sub Judge has rightly dismissed the application for joint trial.

4. The prayer in Ext.P6 application filed in OS.673 of 2012 is to appoint a commissioner to inspect the properties involved in both suits. It appears that this is necessary to support the plaintiffs's case. But prayer made in O.S.673 of 2012 to appoint commissioner to inspect the property in the other suit also cannot be allowed. The learned Sub Judge should have allowed the commission application so far it relates to the property in O.S.673 of 2012.

In the result this O.P is allowed in part. Ext.P5 order is confirmed. Ext.P8 order is partly set aside. Ext.P6 application is allowed in part. The learned Sub Judge shall appoint a commissioner to inspect the property in O.S.673 of 2012.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge