

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937H

OP(C) .No. 2499 of 2015 (O)

(AGAINST ORDER DATED 5.10.2015 IN I.A.NO.1510 OF 2015 IN O.S.NO.59
OF 2014 ON THE FILE OF THE MUNSIFF-MAGISTRATE'S COURT, PONNANI)

PETITIONER(S) :

SARASWATHY, AGED 46 YEARS,
D/O.KARAPPAI, PUNNAKKAL, KADAVANADU AMSOM DESOM,
PONNANI TALUK, MALAPPURAM DISTRICT.

BY ADVS.SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN

RESPONDENT(S) :

SURESH,
S/O.KARAPPAI, PUNNAKKAL, KADAVANADU AMSOM DESOM,
PONNANI TALUK, MALAPPURAM DISTRICT, PIN-679 586.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 27-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- TRUE COPY OF PLAINT DATED 26.2.2014 IN O.S.NO.59/2014 FILED BY
THE RESPONDENT HEREIN BEFORE THE MUNSIFF-MAGISTRATE'S COURT,
PONNANI.

P2- TRUE COPY OF WRITTEN STATEMENT AND COUNTER CLAIM DATED
11.3.2014 IN O.S.NO.59/2014 FILED BEFORE THE MUNSIFF-
MAGISTRATE'S COURT, PONNANI.

P3- TRUE COPY OF WRITTEN STATEMENT DATED 19.8.2014 IN COUNTER CLAIM
IN O.S.NO.59/2014 ON THE FILE OF THE MUNSIFF-MAGISTRATE'S
COURT, PONNANI.

P4- TRUE COPY OF THE APPLICATION NUMBERED AS I.A.NO.1510/2015 AND
DATED 5.9.2015 IN O.S.NO.59/2014 ON THE FILE OF THE MUNSIFF-
MAGISTRATE'S COURT, PONNANI.

P5- TRUE COPY OF COUNTER DATED 15.9.2015 TO EXT.P4.

P6- TRUE COPY OF ORDER DATED 5.10.2015 IN I.A.NO.1510/2015 IN
O.S.NO.59/2014 PASSED BY MUNSIFF-MAGISTRATE'S COURT, PONNANI.

RESPONDENT(S) ' EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE

K.ABRAHAM MATHEW, J.

O.P.(C). No.2499 of 2015

Dated this the 27th day of October, 2015

JUDGMENT

Petitioner is the defendant in O.S.No.59 of 2014 of Munsiff, Ponnani. The suit is for partition. She raised a contention that all the legal heirs of the predecessor of the parties have not been impleaded in the suit and hence the suit is bad for non joinder of necessary parties. She filed Ext.P4, I.A.No.1510 of 2015, to implead those persons as additional defendants. By Ext.P6 order the learned Munsiff has dismissed it. This is challenged.

2. Heard.

3. It is submitted by the learned counsel that no issue has been framed by the trial court as to the contention that the suit is bad for non joinder of necessary parties. If such an issue arises on the pleadings the Munsiff should have framed an issue. The petitioner may file an application to frame an additional issue. If such an application is filed, the learned Munsiff shall pass appropriate orders on the basis of the pleadings. If an additional issue is framed, the question of impleadment of those parties shall be considered by the learned Munsiff before the trial

of the suit.

In the result, this O.P is disposed of as follows: The petitioner may file an application to frame an additional issue with regard to her contention that the suit is bad for non joinder of necessary parties. The learned Munsiff shall comply with the directions given above. The impugned order is set aside.

**K.ABRAHAM MATHEW
JUDGE**

pm