

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

OP(C).No. 2522 of 2015 (O)

OS 85/2012 OF PRINCIPAL MUNSIF COURT, NEYYATTINKARA

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PETITIONER(S)/5TH DEFENDANT:

JOHNY, AGED 65 YEARS, S/O.THANKAYYAN NADAR,
RESIDING AT NIRAPPIL ROADARIKATHU VEEDU,
KAKKATHOOKKI, KOOTHALI P.O.,
THIRUVANANTHAPURAM - 695 505.

BY ADV. SRI.MANU V.

RESPONDENT(S)/PLAINTIFF AND DEFENDANTS 1 TO 4:

1. VICTORIYA AJITHA,
VINCENT NIVAS, KOOTHALI, KOOTHALI P.O.,
VELLARADA DESOM, VELLARADA VILLAGE,
THIRUVANANTHAPURAM - 695 505.
2. VINCENT,
S/O.CHINNA THAMPI, VINCENT NIVAS, KOOTHALI,
KOOTHALI P.O., VELLARADA DESOM, VELLARADA VILLAGE,
THIRUVANANTHAPURAM - 695 505.
3. THANKAYYAN NADAR BINUKUMAR,
NIRAPPIL PUTHEN VEEDU, KAKKATHOOKKI, KOOTHALI P.O.,
THIRUVANANTHAPURAM - 695 505.
4. THANKAYYAN NADAR LIVINSKUMAR,
LIJO BHAVAN, NIRAPPU, KAKKATHOOKKI,
KOOTHALI P.O., THIRUVANANTHAPURAM - 695 505.
5. THANKAYYAN NADAR ROBINSON,
BINDU BHAVAN, NIRAPPIL, KAKKATHOOKKI,
KOOTHALI P.O., THIRUVANANTHAPURAM - 695 505.
6. THAKAYYAN NADAR SENZAR,
NIRAPPIL PUTHEN VEEDU, KAKKATHOOKKI, KOOTHALI P.O.,
THIRUVANANTHAPURAM - 695 505.

R1 & R2 BY ADVS. SRI.L.MOHANAN
SMT.LIGEY ANTONY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

P1:A TRUE PHOTOCOPY OF THE PLAINT IN OS.NO.85/2012 BEFORE THE MUNSIFF COURT, NEYYATTINKARA.

P2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER AND RESPONDENT 3, 4 AND 6 HEREIN (DEFENDANTS 1, 2, 4 AND 5 THEREIN) IN OS.NO.85/2012 BEFORE THE MUNISIF COURT, NEYYATTINKARA.

P3:A TRUE COPY OF THE PLAINT IN OS.NO.925/2008 BEFORE THE MUNISIFF'S COURT, NEYYATTINKARA.

P4:A TRUE COPY OF THE WRITTEN STATEMENT IN OS.NO.925/2008 BEFORE THE MUNISIFF'S COURT, NEYYATTINKARA.

P5:A TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT IN OS.NO.925/2008 BEFORE THE MUNISIFF'S COURT, NEYYATTINKARA.

P6:A TRUE COPY OF IA.NO.5070/2011 IN OS.NO.925/2008 BEFORE THE MUNISIFF'S COURT, NEYYATTINKARA.

P7:A TRUE COPY OF THE OBJECTION FILED BY THE 3RD RESPONDENT HEREIN (1ST DEFENDANT THEREIN) ON HIS BEHALF AND ALSO FOR AND ON BEHALF OF PETITIONER AND RESPONDENTS 4 AND 6 (DEFENDANTS 2 TO 4 THEREIN) IN IA.NO.5070/2011 IN OS.NO.925/2008 BEFORE THE MUNISIFF'S COURT, NEYYATTINKARA.

P8:A TRUE COPY OF THE JUDGMENT DATED 18.10.2011 OF THE PRINCIPAL MUNSIFF'S COURT, NEYYATTINKARA IN OS.NO.925/2008.

P9:A TRUE COPY OF THE LETTER NO.R- 2932/2013 DATED 14.08.2013 ISSUED BY THE DISTRICT REGISTRAR (GENERAL) THIRUVANANTHPURAM, TO THE DEPUTY INSPECTOR GENERAL (LICENSING) THIRUVANANTHAPURAM.

P10:A TRUE COPY OF THE ORDER DATED 13.10.2015 OF THE COURT OF PRINCIPAL MUNSIFF, NEYYATTINKARA IN OS.NO.85/2012

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.2522 of 2015

Dated this the 20th day of November, 2015

J U D G M E N T

Petitioner is the 5th defendant in OS.85 2012 of Principal Munsiff, Neyyattinkara. He raised a contention that the suit is barred under Order 23 Rule 1(4) CPC as there was a previous suit and it was dismissed as not pressed. Just before the trial of the case the learned Munsiff considered the issue and passed Ext.P10 order. The finding is that the suit is not barred. This is challenged.

2. Heard.

3. As the suit had been taken up for trial, it would have been proper for the learned Munsiff to try all the issues instead of trying one of them as a preliminary issue. But that is no ground to set aside the order. To take a decision it was necessary to peruse the plaint in the earlier suit. The learned counsel for the respondent submits the learned Munsiff had actually perused it. But that is not stated in the order. So I am inclined to set aside the

impugned order. The learned Munsiff shall try the suit and enter a finding on all the issues.

In the result, this OP is allowed. Ext.P10 order is set aside. The learned Munsiff is directed to try the suit and dispose it of on merits.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge