

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW**

**MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937**

**OP(C).No. 2526 of 2015 (O)**

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AGAINST THE ORDER/JUDGMENT IN OS 52/2013 of I ADDITIONAL SUB COURT,  
KOZHIKODE  
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**PETITIONER(S):**  
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**SHAJI AGED 43 YEARS  
S/O BALAKRISHNAN, KUZHIMBATTIL HOUSE, PARANNUR P.O.  
PULLALUR, KOZHIKODE, PIN:673585.**

**BY ADV. SRI.E.NARAYANAN**

**RESPONDENT(S):**  
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- 1. VADAKKEDATH KARTHIAYANI AMMA, AGED 79 YEARS  
D/O. NARAYANAN NAIR, VADAKKEDATH HOSUE, CHELAVOOR P.O.  
VIRIPPIL, KOZHIKODE, PIN:673571.**
- 2. DAKSHYANI AMMA, AGED 67 YEARS  
W/O BALAKRISHNAN, KUZHIMBATTIL HOUSE, PARANNUR P.O.  
PULLALUR, KOZHIKODE, PIN:673585.**
- 3. SASI  
S/O BALAKRISHNAN, KUZHIMBATTIL HOUSE, PARANNUR P.O.  
PULLALUR, KOZHIKODE, PIN:673585.**
- 4. DILIPKUMAR  
S/O. BALAKRISHNAN, KUZHIMBATTIL HOUSE, PARANNUR P.O.  
PULLALUR, KOZHIKODE, PIN:673585.**
- 5. RAJEESH KUMAR  
S/O BALAKRISHNAN, KUZHIMBATTIL HOUSE, PARANNUR P.O.  
PULLALUR, KOZHIKODE, PIN:673585.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 19-10-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT P1: TRUE COPY OF PLAINT IN OS NO.52/2013 ON THE FILE OF THE FIRST ADDITIONAL SUBORDINATE JUDGE'S COURT, KOZHIKODE.**

**EXHIBIT P2: TRUE COPY OF WRITTEN STATEMENT FILED BY THE RESPONDENT HEREIN DATED 24.3.2014 IN O.S.NO.52/2013 ON THE FILE OF THE FIRST ADDITIONAL SUBORDINATE JUDGE'S COURT, KOZHIKODE.**

**EXHIBIT P3: TRUE COPY OF I.A.NO.2985/2015 FILED UNDER ORDER 26 RULE 9 OF THE CPC, DATED 7.8.2015 IN OS NO.52/2013 ON THE FILE OF THE FIRST ADDITIONAL SUBORDINATE JUDGE'S COURT, KOZHIKODE.**

**EXHIBIT P4: TRUE COPY OF COUNTER STATEMENT FILED BY THE RESPONDENT HEREIN IN I.A.NO.2985/2015 IN OS NO.52/2013 ON THE FILE OF THE FIRST ADDITIONAL SUBORDINATE JUDGE'S COURT, KOZHIKODE.**

**EXHIBIT P5: TRUE COPY OF ORDER DATED 3.10.2015 IN I.A.NO.2985/2015 IN OS NO.52/2013 ON THE FILE OF THE FIRST ADDITIONAL SUBORDINATE JUDGE'S COURT, KOZHIKODE.**

**RESPONDENT'S EXHIBITS: NIL**  
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R.AV

//TRUE COPY//

PA TO JUDGE

**K. ABRAHAM MATHEW, J.**

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**O.P.(C)No.2526 of 2015**  
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**Dated this the 19<sup>th</sup> day of October, 2015**

**J U D G M E N T**

Petitioner is the plaintiff in O.S.No.52 of 2013 of First Additional Sub Judge, Kozhikode. The suit is for partition. The respondents/defendants contended that some of the properties are not available for partition. The petitioner filed Ext.P3 application to appoint a commissioner to ascertain whether the properties are available. This has been dismissed by Ext.P5 order. Its correctness is challenged.

2. Heard.

3. It is submitted that the petitioner has produced documents to prove that the predecessor had title to the properties sought to be partitioned. It is for the respondents to prove that they are not available. the petitioner need not disprove what the respondents have not proved. For this reason I am inclined to hold that the application was rightly dismissed by the trial court.

In the result, this O.P is dismissed.

sd/-

**K. ABRAHAM MATHEW  
JUDGE**