

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

OP(C).No. 2533 of 2015 (O)

OS 409/2012 of FIRST ADDITIONALMUNSIFF COURT, NEYYATTINKARA

PETITIONERS :

1. SOMATHEERAM RESEARCH INSTITUTE & AYURVEDA HOSPITAL PVT.LTD
HEAD OFFICE, CHOWARA, KOTTUKAL VILLAGE, NEYYATTINKARA TALUK,
REPRESENTED BY ITS DULY AUTHORIZED AGENT, CHAIRMAN & MANAGING
DIRECTOR, BABY MATHEW, S/O. A.J.MATHEW, RESIDING AT 'ARAMBANKUDI
VEEDU', CHOWARA, KOTTUKAL VILLAGE, NEYYATTINKARA TALUK
2. SOMATHEERAM AYURVEDIC BEACH RESORT PVT.LTD,
HEAD OFFICE, CHOWARA, KOTTUKAL VILLAGE, NEYYATTINKARA TALUK,
REPRESENTED BY ITS DULY AUTHORIZED AGENT, CHAIRMAN & MANAGING
DIRECTOR, BABY MATHEW, S/O. A.J.MATHEW, RESIDING AT 'ARAMBANKUDI
VEEDU', CHOWARA, KOTTUKAL VILLAGE, NEYYATTINKARA TALUK
3. MANALTHEERAM BEACH RESORT PVT.LTD
HEAD OFFICE, CHOWARA, KOTTUKAL VILLAGE, NEYYATTINKARA TALUK,
REPRESENTED BY ITS DULY AUTHORIZED AGENT, CHAIRMAN, BABY
MATHEW, S/O. A.J.MATHEW, RESIDING AT 'ARAMBANKUDI VEEDU', CHOWARA,
KOTTUKAL VILLAGE, NEYYATTINKARA TALUK

BY ADVS.SRI.V.G.ARUN (K/795/2004)
SRI.ANOOP BHASKAR

RESPONDENTS/DEFENDANTS :

1. SHAMMI, S/O.NEHRU, RESIDING AT 'VALIYAVILA VEEDU', PARAPADARNNA,
CHOWARA P.O, KOTTUKAL VILLAGE, KOTTUKAL DESOM,
NEYYATTINKARA - 695 121
2. SANTHOSEH, S/O.VASUDEVAN NAIR,
RESIDING AT 'PONKALAYITTAVILA VEEDU', CHOWARA.P.O,
KOTTUKAL VILLAGE, KOTTUKAL DESOM, NEYYATTINKARA - 695 121
3. KUTTAN, S/O.BALAN, RESIDING AT "RAJESH BHAVAN' ALSO KNOWN BY THE
NAME 'VITHARATHANVILA VEEDU', CHOWARA P.O.M KOTTUKAL VILLAGE,
NEYYATTINKARA - 695 121

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 20-10-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 2533 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 : COPY OF THE PLAINT IN O.S.NO.409 OF 2012 ON THE FILE OF THE FIRST ADDITIONAL MUNSIFF COURT, NEYYATTINKARA

EXT.P2 : COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST DEFENDANT IN O.S.NO.409 OF 2012 ON THE FILE OF THE FIRST ADDITIONAL MUNSIFF COURT, NEYYATTINKARA

EXT.P3 : COPY OF I.A.NO.5467 OF 2015 IN O.S.NO.409 OF 2012 ON THE FILE OF THE FIRST ADDITIONAL MUNSIFF COURT, NEYYATTINKARA

EXT.P4 : COPY OF THE SAID ORDER DATED 9.10.2015 IN O.S.NO.409 OF 2012 ON THE FILE OF THE FIRST ADDITIONAL MUNSIFF COURT, NEYYATTINKARA

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

K.ABRAHAM MATHEW, J.

O.P.(C).No.2533 of 2015

Dated this the 20th day of October, 2015

J U D G M E N T

Petitioners are the plaintiffs in O.S.No.409 of 2012 of the First Additional Munsiff's Court, Neyyattinkara. The defendants raised a contention that the local authority was a necessary party. Immediately the petitioners filed I.A.No.5467 of 2015 to implead the Panchayath as an additional defendant. By Ext.P4 order the learned Munsiff has dismissed it.

2. Heard.

3. If there is a contention that the suit is bad for non joinder of the local authority, the Munsiff should have framed an issue with regard to it and should have heard it as a preliminary issue. The petitioners who have no case that local authority is a necessary party cannot maintain an application for its impleadment. I think the proper course is to direct the learned Munsiff to hear on the question of non joinder of necessary parties and hear it as preliminary issue.

In the result, this original petition is disposed of with a direction to the learned Munsiff to hear on the question of maintainability of the suit for non joinder of the local authority. If no issue has been framed with regard to it, the Munsiff shall

consider whether such an issue arises on the pleadings and if the court finds that no such issue arises, an appropriate order shall be passed.

Sd/-
K.ABRAHAM MATHEW, JUDGE

AV/26/10