

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

OP(C).No. 2593 of 2015 (O)

**-----
AGAINST THE ORDER/JUDGMENT IN OS 784/2011 of ADDITIONAL MUNSIF-I,
NEYYATTINKARA
-----**

PETITIONER(S):

- 1. T.K.SARITHAKUMARY AGED 48 YEARS
D/O. KAMALAMMA, NELLIKKALAVILA VEEDU
CHERIYAKOLLA DESOM, KUNNATHUKAL VILLAGE
THIRUVANANTHAPURAM DISTRICT.**
- 2. SALIMKUMAR AGED 45 YEARS
S/O. THANKAPPAN NADAR, NELLIKKALAVILA VEEDU
CHERIYAKOLLA DESOM, KUNNATHUKAL VILLAGE
THIRUVANANTHAPURAM DISTRICT.**
- 3. USHAKUMARY AGED 40 YEARS
D/O. KAMALAMMA, SOORAJ BHAVAN, PASUKOTTUKONAM
NADOORKOLLA, KOLLAYIL VILLAGE
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.R.B.RAJESH**

RESPONDENT(S):

- 1. KAMALAMMAL, AGED 70 YEARS
D/O. CHINNAMMAL, MATHA BHAVAN, NELLIKKAVALA
CHERIYAKOLLA DESOM, KUNNATHUKAL VILLAGE
KARAKKONAM P.O., THIRUVANANTHAPURAM DISTRICT
PIN-695 002.**
- 2. THANKAYYAN NADAR , AGED 65 YEARS
S/O. ARULAPPAN, NEDIYAVILA PUTHEN VEEDU, THRESYAPURAM
KARAKKONAM, KUNNATHUKAL VILLAGE, KARAKKONAM P.O.
THIRUVANANTHAPURAM DISTRICT-695 002.**
- 3. SATHYADAS
S/O. ENOSE NADAR, ROADARIKATHU PUTHEN VEEDU
CHERPANNAKKALA, KARAKKONAM, KUNNATHUKAL VILLAGE
KARAKKONAM P.O., THIRUVANANTHAPURAM DISTRICT
PIN-695 002.**
- 4. JOHN, AGED 55 YEARS
S/O. ENOSE NADAR
PUPLIYARATHU KIZHAKKEKARA PUTHEN VEEDU, KARAKKONAM
KUNNATHUKAL VILLAGE, KARAKKONAM P.O.
THIRUVANANTHAPURAM DISTRICT, PIN-695 002.**

5. LAWRENCE , AGED 51 YEARS
S/O. ENOSE NADAR
PULIYARATHU KIZHAKKEKARA PUTHEN VEEDU, KARAKKONAM
KUNNUTHUKAL VILLAGE, KARAKKONAM P.O.
THIRUVANANTHAPURAM DISTRICT, PIN-695 002.
6. FRANCIS , AGED 43 YEARS
S/O. ENOSE NADAR, NEDIYAVILA PUTHEN VEEDU, KARAKKONAM
KUNNUTHUKAL VILLAGE, KARAKKONAM P.O.
THIRUVANANTHAPURAM DISTRICT-695 002.
7. JOYCE , AGED 49 YEARS
D/O. ENOSE NADAR, NEDIYAVILA PUTHEN VEEDU, KARAKKONAM
KUNNUTHUKAL VILLAGE, KARAKKONAM P.O.
THIRUVANANTHAPURAM DISTRICT-695 002.
8. MARY , AGED 48 YEARS
D/O. ENOSE NADAR, NEDIYAVILA PUTHEN VEEDU, KARAKKONAM
KUNNUTHUKAL VILLAGE, KARAKONAM P.O.
THIRUVANANTHAPURAM DISTRICT, PIN-695 002.
9. SANTHA , AGED 47 YEARS
D/O. ENOSE NADAR, NEDIYAVILA PUTHEN VEEDU, KARAKKONAM
KUNNUTHUKAL VILLAGE, KARAKONAM P.O.
THIRUVANANTHAPURAM DISTRICT, PIN-695 002.
10. ALI , AGED 44 YEARS
D/O. ENOSE NADAR, NEDIYAVILA PUTHEN VEEDU, KARAKKONAM
KUNNUTHUKAL VILLAGE, KARAKONAM P.O.
THIRUVANANTHAPURAM DISTRICT, PIN-695 002.
11. DORUTHY VASANTHAKUMARY , AGED 55 YEARS
D/O. ARAYAPPU NADAR, AJITH BHAVAN
NEAR KARAKKONAM MEDICAL COLLEGE, KUNNATHUKAL DESOM
KUNNATHUKAL VILLAGE, KARAKKONAM P.O.
THIRUVANANTHAPURAM DISTRICT-695 002.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 2593 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1 : COPY OF THE PLAINT IN OS NO.784/2011 BEFORE THE ADDITIONAL MUNSIF-I, NEYYATTINKARA, DTD.29.8.2011.

EXHIBIT.P2 : COPY OF THE AFFIDAVIT AND PETITION IN IA NO.5006/2012 IN OS NO.784/2011 DTD.16.9.2015.

EXHIBIT.P3 : COPY OF THE SAID COUNTER AFFIDAVIT DTD.19.9.2015.

EXHIBIT.P4 : COPY OF THE ORDER DTD.28.9.2015 PASSED BY THE COURT OF THE ADDITIONAL MUNSIF-I, NEYYATTINKARA IN IA NO.5006/2015 IN OS NO.784/2011.

RESPONDENT(S)' EXHIBITS

K. ABRAHAM MATHEW, J.

O.P.(C).No.2593 of 2015

Dated this the 28th day of October, 2015

J U D G M E N T

Petitioners are the plaintiffs in O.S.784 of 2011 of Additional Munsiff Court-I, Neyyattinkara. The suit is for partition of three items of properties. In the course of proceedings in the trial court the petitioners allegedly knew that out of the three items only one item is available for partition. So they filed Ext.P2 application to amend the plaint. It has been dismissed by the trial court as per Ext.P4 order. This is challenged.

2. Heard.

3. If two items of properties are not available for partition the petitioners may file a statement before the court or make an endorsement on the plaint that the suit is not pressed so far as those items are concerned. Even that is not necessary as the petitioners rely on a document produced by the 11th defendant showing that two items are not available. The court can take notice of it and hold that those two items are not available for partition and it may pass a decree only in respect of the remaining item. The

amendment application was totally unnecessary. The purpose will be served even without an application.

In the result, this O.P is dismissed with the above observation.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge