

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

O.P. (C).No. 2688 of 2015 (O)

**AGAINST THE ORDER DT.10.09.2015 IN I.A. No.1069/2014 IN O.S. No.290/2008 ON THE
FILE OF THE HON'BLE SUBORDINATE JUDGE OF TIRUR**

PETITIONER:

**K.SUKUMARAN, AGED 60 YEARS,
S/O. ARUMUGHAN, CHUKKALATHIL HOUSE,
P.O. KOLAKKATTU CHALI, VIA CHELAMBRA,
MALAPPURAM DISTRICT.**

BY ADV. SMT. N.DEEPA

RESPONDENT(S):

- 1. VILASINI, AGED 53 YEARS,
D/O. LATE. VASU, NELLIKOTTU,
P.O. PULLIPARAMBU, CHELAMBRA – 673 634.**
- 2. PUSHPA, AGED 50, D/O. LATE. VASU,
NELLIKOTTU, P.O. PULLIPARAMBU, CHELAMBRA – 673 634.**
- 3. REMA, AGED 47, D/O. LATE. VASU,
NELLIKOTTU, P.O. PULLIPARAMBU, CHELAMBRA – 673 634.**
- 4. PRADEEPKUMAR, AGED 40, S/O. LATE. VASU,
NELLIKOTTU, P.O. PULLIPARAMBU, CHELAMBRA – 673 634.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 06-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS:

- EXT. P1: A COPY OF THE PLAINT IN O.S. NO.290/2008 IN O.S. NO.290/2008 ON THE FILE OF THE HON'BLE SUBORDINATE JUDGE OF TIRUR.**
- EXT. P2: A COPY OF THE WRITTEN STATEMENT DT. 07.02.2009 FILED BY VASU, ORIGINAL DEFENDANT IN O.S. NO.290/2008 ON THE FILE OF THE HON'BLE SUBORDINATE JUDGE OF TIRUR.**
- EXT. P3: A COPY OF THE PETITION IN I.A. NO.1069/2014 IN O.S. NO.290/2008 ON THE FILE OF THE HON'BLE SUBORDINATE JUDGE OF TIRUR DT. 14.06.2014.**
- EXT. P4: A COPY OF THE OBJECTION FILED BY RESPONDENTS HEREIN TO EXT.P3 I.A. DT. JUNE, 2015.**
- EXT. P5: A COPY OF THE ORDER DT. 10.09.2015 IN I.A. No.1069/2014 IN O.S. No.290/2008 ON THE FILE OF THE HON'BLE SUBORDINATE JUDGE OF TIRUR DT. 10.09.15.**
- EXT. P6: A COPY OF THE PETITION FOR AMENDMENT FILED AS I.A. NO.1753/2015 IN O.S. NO.290/2008 ON THE IFLE OF THE HON'BLE SUB JUDGE OF TIRUR DT. 27.09.15.**
- EXT. P7: A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENTS NO.2 TO 5 HEREIN TO EXT.P6 DT.OCTOBER, 2015.**

RESPONDENTS EXHIBITS: - NIL

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2688 of 2015

Dated this the 6th day of November, 2015

JUDGMENT

Petitioner is the plaintiff in O.S. No. 290/2008 of Sub Court, Tirur. He filed an application to appoint a commissioner to measure the property on the basis of survey plan. This has been dismissed by the learned Sub Judge by Ext.P5 order. This is challenged.

2. The suit is for partition of immovable property. Originally, there was only one time of property. The respondents/defendants raised a contention in their written statement that the description of the property is wrong and the correct description is given in their written statement. On the basis of that contention, the petitioner amended his plaint and incorporated the property described in the written statement as the 2nd item property. Still, item no. 1 property was not deleted from the plaint. Thereafter, the petitioner filed I.A.

No.1069/2014 to appoint a commissioner to identify the plaint scheduled properties.

3. I have perused the plaint. In the plaint, it is not disclosed how the predecessor of the parties got title to the B Schedule item no.1. In fact, on the date of the institute the petitioner had no specific case about the title of his predecessor. The learned Sub Judge should have even rejected the plaint. But the contesting defendants have given the description of the property of their predecessor in their written statement. They have given the number of the title deed. The petitioner has incorporated the description of this property as item no.2. He should have deleted item no.1 when the second item property was incorporated. That was not done. I do not find any means to identify the property described in the plaint B Schedule item no.1. The learned Sub Judge was fully justified in dismissing the commission application.

4. But if the petitioner files an additional pleadings giving the particulars of the title deed of his predecessor

in respect of item no.1 the court shall allow it, in which the respondents shall be allowed to file an additional written statement. It is made clear that if the subsequent pleadings of the petitioner do not disclose the number of the title deed of the predecessor the court shall reject it.

In the result, this Original Petition is disposed of with the following direction:

If the petitioner files additional pleadings within 10 days giving particulars of the title deed of his predecessor the trial court shall receive it on file. It shall give the respondents an opportunity to file additional pleadings. If the additional pleadings of the petitioner do not contain the particulars of the predecessors title deed in respect of B Schedule Item no. 1, the court shall not receive it on file.

Sd/-
K. ABRAHAM MATHEW
JUDGE

ww/06/11/2015