

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

OP(C).No. 1548 of 2014 (O)

OS 4/2007 OF SUB COURT, THIRUVALLA

PETITIONER(S):

1. **PALLIKADAVIL CHARITABLE AND EDUCATIONAL TRUST, NIRANAM
HAVING ITS OFFICE AT JERUSALAM MARTHOMA CHURCH
NIRANAM, NIRANAM VILLAGE,
PATHANAMTHITTA DISTRICT REPRESENTED BY ITS TRUSTEES
KURUVILLA VARGHESE.**
2. **REV. V.M MATHEW, AGED 63 YEARS,
S/O.LATE C.K MATHAI, VICAR, JERUSALAM MARTHOMA CHURCH,
NIRANAM, NIRANAM VILLAGE, PATHANAMTHITTA DISTRICT.**
3. **KURUVILLA VARGHESE, AGED 56 YEARS,
S/O.LATE M.K VARGHESE, MANALIL, KOICKAL,
NIRANAM VILLAGE, PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S
SRI.RENJIT GEORGE
SRI.RENJITH.R.NAIR
SMT ANJU MOHAN
SRI.S.K.SUJITH KRISHNA
SRI.S.VISHNU (ARIKKATTIL)**

RESPONDENT(S):

1. **ST.MARY'S ORTHODOX VALLYAPALLY, NIRANAM,
NIRANAM VILLAGE, THIRUVALLA REPRESENTED ITS VICAR
REV FR.OOMMEN AND TRUSTEE, JACOB, PIN-689101.**
2. **REV.FR.OOMMEN,, AGED 66 YEARS,
S/O.PAUL, VICAR OF ST.MARY'S ORTHODOX VALIYAPALLY,
NIRANAM, NIRANAM VILLAGE-689621.**

PJ

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3. JACOB, AGED 65 YEARS
S/O. ITTICHERIA, ELANGICKAL PUTHENPARAMBIL, NIRANAM
NIRANAM VILLAGE-689621.
4. ROSHNI NINAN, AGED 65 YEARS,
W/O.NINAN, PALLIKADAVIL A-15, LAKSHMY NAGAR,
OPP.M.G COLLEGE, KESAVADASAPURAM, PATTOM P.O,
THIRUVANANTHAPURAM-695103.
5. ROBIN NINAN, AGED 27 YEARS,
W/O.NINAN, PALLIKADAVIL A-15, LAKSHMY NAGAR,
OPP.M.G COLLEGE, KESAVADASAPURAM, PATTOM P.O,
THIRUVANANTHAPURAM-695103.
6. THANKAMMA, AGED 86 YEARS,
D/O.NINAN, KADACHERIL, PAVUKKARA,
MANNAR POST, CHENGANNUR, ALAPPUZHA DISTRICT-689121.
7. NINAN CHACKO, AGED 50 YEARS,
S/O.P.N NINAN, HOUSE NO 19, CHUNGOM POST,
KOTTAYAM-688011.
8. ANNAMMA CHACKO, AGED 79 YEARS
W/O.P.N CHACKO, HOUSE NO 19, CHUNGOM POST,
KOTTAYAM-688011.
9. REBACCA PHILIP,, AGED 51 YEARS
D/O.P.N CHACKO, HOUSE NO 19, CHUNGOM POST
KOTTAYAM-688011.
10. AMMINI PHILIP, AGED 76 YEARS,
W/O.PHILIP, A1-20, SANTI COLONY,
ANNA NAGAR WEST P.O, MADRAS 40.
11. DR.ELIZABETH NINAN,
PALLIKADAVIL, LITTLE FLOWER ROAD, KALOOR,
KOCHI-682011.
12. VASANTH NINAN,
PALLIKADAVIL, LITTLE FLOWER ROAD, KALOOR,
KOCHI-682011.
13. JEENA NINAN,
PALLIKADAVIL, LITTLE FLOWER ROAD, KALOOR, KOCHI-682011.
14. JAGAN MATHEW
PRINCIPAL SECRETARY, DEPARTMENT OF ENVIORNMENT, R 234
BAPU BHAVAN, LUCKNOW, U.P-226001.

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15. BIJOY MATHEWS,
A-1 20, SHANTI COLONY, ANNA NAGAR WEST P.O
CHENNAI 40.

R1-R3 BY ADVS. SRI.CHERIAN GEE VARGHESE
SRI.P.HARIDAS

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF PLAINT O.S NO 4/2007 OF THE SUB COURT,THIRUVALLA**
- EXHIBIT P2 THE TRUE COPY OF WRITTEN STATEMENT FILED BY RESPONDENTS 1 TO 3 IN O.S NO 4/2007 OF THE SUB COURT,THIRUVALLA**
- EXHIBIT P3 THE TRUE COPY OF IA NO 512/2014 IN O.S NO 4/2007 OF THE SUB COURT,THIRUVALLA**
- EXHIBIT P4 THE TRUE COPY OF ORDER DATED 03/06/2014 IN IA NO 512/2014 IN O.S NO 4/2007 OF THE SUB COURT ,THIRUVALLA**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

O.P.(C)No.1548 of 2014

Dated this the 3rd day of September, 2015.

J U D G M E N T

The petitioner, the plaintiff in a suit for declaration, recovery, possession etc. has approached this Court, aggrieved by the dismissal of the application to summon the second witness in a 'will' after re-opening the evidence.

2. The main reason appears to have persuaded by the court below to decline the application is on account of the delay. This Court is of the view that since the petitioner is relying upon a will and is attempting to propound the will by examining one of the witnesses, it would amount to shutting out of the evidence on the side of the petitioner. Therefore, the impugned order is liable to be set aside. Accordingly, the same is set aside.

3. Of course, the delay involved can very well be remedied by payment of cost to the respondent. The cost of Rs.3,000/- (Rupees three thousand only) shall be paid to the

counsel appearing for the respondent before this Court within 2 weeks from today.

4. In view of the fact that the witness is allegedly working in judicial service in Tamil Nadu, it is open for the court below to appoint an Advocate Commissioner for examining him as a witness. The entire cost, including the cost to be incurred for the contesting defendant nos.1 to 3 shall also borne by the petitioner. Necessary action in this regard shall be completed by the court below within 2 months of receipt of copy of this judgment.

Sd/-
A.MUHAMED MUSTAQUE,
Judge.

ami/

//True copy//

P.A.to Judge