

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

OP(C).No. 2704 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OS 229/2011 of SUB COURT, CHERTHALA

PETITIONER(S):

**LUVEESA AGED 59 YEARS
D/O.LATE ELIAS, KATTIPPARAMPIL HOUSE
CHERTHALA SOUTH VILLAGE, ARTHUNKAL P.O.**

**BY ADVS.SMT.AMBILI P.MADHAVAN
SRI.C.R.SANISH**

RESPONDENT(S):

- 1. LUVALIN ANTONY MICHEAL DAMIYANOSE
S/O.DAMIYANOSE, KATTIPPARAMPIL
CHERTHALA SOUTH VILLAGE, ALAPPUZHA DISTRICT-688524.**
- 2. IAN
S/O.DAMIYANOSE, S.BLOCK, 117/1
5TH MAIN ROAD, ANNA NAGAR, MADRAS-600001.**
- 3. JAMES @ THANKACHAN
S/O.BIYATRESE, HOUSE NO.350, WARD NO.6
CHERTHALA SOUTH VILLAGE, CHERTHALA THALUK
ALAPPUZHA DISTRICT-688524.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: THE TRUE COPY OF THE PLAINT IN O.S.NO.229/2011.

EXHIBIT-P2: THE TRUE COPY OF THE PLAINT IN O.S.8/84.

EXHIBIT-P3: THE COPY OF THE COMPROMISE DECREE IN O.S.8/84.

EXHIBIT-P4: THE COPY OF THE ORDER IN I.A.444/2015 IN O.S.NO.229/2011.

EXHIBIT-P5: THE COPY OF THE PETITION IN I.A.561/2015.

EXHIBIT-P6: THE COPY OF THE WRITTEN STATEMENT FILED BY THE FIRST RESPONDENT IN EXHIBIT-P1 SUIT.

EXHIBIT-P7: TRUE COPY OF THE B DIARY PROCEEDINGS OF THE HONOURABLE SUBORDINATE JUDGES COURT, CHERTHALA IN OS 229/2011.

RESPONDENTS' EXHIBITS: **NIL**

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.2704 of 2015

Dated this the 12th day of November, 2015

J U D G M E N T

Petitioner is the plaintiff in OS.229 of 2011 on the file of Sub Judge, Cherthala. The main prayer in the suit is to set aside a release deed to which the petitioner is not a party and to declare that the decree passed in OS 8 of 1984 of Sub Court, Cherthala is not binding on the petitioner and for partition of the property and separate possession of petitioner's 1/3 right in it. It is submitted that the learned Sub Judge has posted the case for hearing on the maintainability of the suit. The prayer is to issue a direction to the learned Sub Judge not to hear the question.

2. Heard.

3. It is not mentioned on what ground the learned Sub Judge has posted the case for hearing on the maintainability of the suit. It is submitted by the learned counsel that there is no contention that the suit is not maintainable and no issue has been framed as to its maintainability. So the learned Sub Judge should have

made it clear that on what ground he has posted the case for hearing on maintainability. It appears that the petitioner has not made all the parties in OS.8 of 1984 parties to the suit. It is true that the learned Sub Judge has the power to order impleadment of any parties suo motu if he finds that they are necessary parties to the proceedings. In this case the petitioner has already filed an application IA 561 of 2015 for impleadment of the other parties to OS.8 of 1984 and notice has been issued to the parties sought to be impleaded. If that is true, the learned Sub Judge should hear on the question of maintainability only after a decision is taken on the said application.

With the above observation this O.P is closed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge

