

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP(C).No. 1583 of 2014 (O)

PETITIONER(S):

**JANAKI
W/O.NARAYANA NAIK, RESIDING AT SEETHANGOLI HOUSE
BELA VILLAGE, KASARAGOD TALUK & DISTRICT.**

**BY ADVS.SRI.SURESH KUMAR KODOTH
SRI.K.PANTONY BINU**

RESPONDENT(S):

- 1. KAMALA
ULLODI POST, BELA VILLAGE
KASARAGOD TALUK & DISTRICT - 671 321.**
- 2. GOPALA NAIKA, S/O.APPANNA NAIKA, NEAR BELA VILLAGE OFFICE,
NEERCHAL, BELA VILLAGE & POST
KASARAGOD TALUK & DISTRICT- 671 321.**
- 3. CHANIYARU W/O.LATE AITHA,
R/AT ULLODI POST, BELA VILLAGE
KASARAGOD TALUK & DISTRICT - 671 321.**
- 4. AITHA, S/O.CHUKRA,
R/AT MANYA, ULLODI POST, BELA VILLAGE
KASARGOD TALUK & DISTRICT - 671 321.**
- 5. T.S.MOHAMMED, RESIDING AT VIDYANAGAR HOUSE,
NEAR DELMA QUARTERS, VIDYANAGAR POST
MUTTATHODY VILLAGE
KASARAGOD TALUK & DISTRICT - 671 123.**
- 6. CHAIRMAN,
M/S.ABDULLA MEMORIAL EDUCATIONAL TRUST
MALIK DEENAR COLLEGE OF B PHARM, BELA VILLAGE & POST
SEETHANGOLI, KASARAGOD TALUK & DISTRICT - 671 321.**

**R-R6 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R-R6 BY ADV. SRI.P.GOPINATH
R-R6 BY ADV. SRI.P.BENNY THOMAS
R-R6 BY ADV. SRI.K.JOHN MATHAI
R-R6 BY ADV. SRI.JOSON MANAVALAN
R6 BY ADV. SRI.KURRYAN THOMAS**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 1583 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1-TRUE COPY OF THE JUDGMENT DATED 7/2/2010 IN OS.NO.32/2008.

EXT.P2-TRUE COPY OF THE ORDER DATED 2.4.2014 IN IA.NO.133/2014 IN AS.NO.23/2010.

RESPONDENT'S EXHIBITS:

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.1583 OF 2014

Dated this the 19th day of October, 2015

J U D G M E N T

Petitioner was the plaintiff in O.S.32 of 2008 of Munsiff Court, Kasaragod. The suit was dismissed. The Petitioner filed AS.23 of 2010 in District Court, Kasaragod. Thereafter, she filed IA.133 of 2014 for permission to withdraw the the suit, which was dismissed by Ext.P2 order. Its correctness is challenged.

2. Heard.

3. The suit was for declaration of possessory title and consequential injunction. it is seen from Ext.P2 order that the petitioner wanted to withdraw the suit with permission to file a fresh suit for the value of improvements allegedly effected by her.

4. The plaintiff is always entitled to withdraw her suit unconditionally. Permission of the court to withdraw it is necessary only if she wants the court to grant liberty to file fresh suit on the same cause of action. If the proposal is to file a fresh suit on a different cause of action, no

permission is necessary. In this case. the petitioner has no case that the cause of action for the proposed suit is the same as the one pleaded in this suit. So there is no question of maintaining an application under Order 23 Rule 1 C.P.C. The learned district Judge rightly dismissed it.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge