

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

OP(C).No. 2878 of 2015 (O)

**IA.NO.7874/2012 IN OS 1402/2012 OF I ADDL. MUNSIFF COURT,
THIRUVANANTHAPURAM DATED 09-02-2015**
.....

PETITIONER(S):

**D.KUMARESAN, AGED 62 YEARS,
S/O.LATE DAMODHARAN, RESIDING AT KUMAR NIVAS,
NEERAZHI LANE ULLOOR, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN
SRI.N.S.RAVINDRANATHAN
SRI.SIDHARTH A.MENON**

RESPONDENT(S):

- 1. JAGADAMMA, D/O.AMMUKUTTY,
AGED 80 YEARS, RESIDING AT RANJINI, NEERAZHI LANE,
MEDICAL COLLEGE P.O., ULLOOR, THIRUVANANTHAPURAM,
PIN - 695 011.**
- 2. A. KRISHNAMMA, D/O.AMMUKUTTY,
AGED 74 YEARS, RESIDING AT JOLLY BHAVAN,
MEDICAL COLLEGE P.O., ULLOOR, THIRUVANANTHAPURAM,
PIN - 695 011.**
- 3. K.G. VIJAYAMMA, W/O.LATE SREENIVASAN,
AGED 70 YEARS, RESIDING AT KRISHNA BHAVAN,
NEERAZHI LANE, ULLOOR, THIRUVANANTHAPURAM,
PIN - 695 011.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 30-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 2878 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 - TRUE COPY OF THE PLAINT IN OS NO.1402/2012.

P2 - TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.1402/2012.

P3 - TRUE COPY OF THE PETITION TO HEAR THE MAINTAINABILITY (IA NO.7874/2012)

P4 - TRUE COPY OF THE OBJECTION TO THE MAINTAINABILITY PETITION.

P5- TRUE COPY OF THE PLAINT IN OS NO.64/2009.

P6 - TRUE COPY OF THE WRITTEN STATEMENT FILED BY TE RESPONDENTS 1 TO 3
IN OS NO.64/2009.

P7 - TRUE COPY OF THE PLAINT IN OS NO.327/2009.

P8 - TRUE COPY OF THE PRELIMINARY JUDGMENT IN OS NO.327/2009.

P9 - COPY OF THE ORDER DATED 9.2.2015 IN IA NO.7874/2012 IN OS NO.1402/2012.

P10 - COPY OF THE JUDGMENT IN OS NO.1402/2012.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2878 of 2015

Dated this the 30th day of November, 2015

J U D G M E N T

Petitioner was the plaintiff in OS.1402 of 2012 of AdditionalMunsiff-I,Thiruvananthapuram. The respondents/defendants raised a contention that the suit was not maintainable. They filed IA.7874 of 2012 to hear the question of maintainability as a preliminary issue. Accordingly it was heard. By Ext.P9 'order' the court found that the suit was not maintainable and accordingly it was dismissed. This is challenged.

2. It was wrong on the part of the trial court to label the impugned proceedings as an order. In fact, it is a judgment because it puts an end to the lis between the parties. It is specifically stated that the suit is dismissed. So it shall be followed by a decree. A decree cannot be challenged in a proceedings under Article 227 of the Constitution. The remedy of the petitioner is to challenge it by way of an appeal. If a decree has not been drafted, the petitioner may bring it to the notice of the trial court which

shall immediately draft a decree.

In the result this OP is dismissed with the above observation.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge