

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW**

**TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937**

**OP(C).No. 1814 of 2014 (O)**  
-----

**AGAINST THE ORDER DATED 18.1.2014 IN IA.NO.1812/2013 IN O.S.NO.219/2012  
ON THE FILE OF THE SUBORDINATE JUDGE, KANNUR**  
-----

**PETITIONER(S):**  
-----

**DEVASYA MUNDAPPALLIL AGED 63 YEARS  
S/O. EALI, MUNDAPPALLIL HOUSE, NEAR CHAVARA CONVENT  
P.O. IRITTY, THALASSERY TALUK, KANNUR DISTRICT.**

**BY ADVS.SRI.SUNIL NAIR PALAKKAT  
SRI.K.N.ABHILASH**

**RESPONDENT(S):**  
-----

- 1. ROSAMMA @ MOLY M.J., AGED 49 YEARS  
W/O. BABY, PITTAPPILLIL HOUSE, PAYYAVOOR AMSOM  
DESOM, P.O. PAISAKKARI, TALIPARAMBA TALUK  
KANNUR DISTRICT.**
- 2. MARY @ MARIYAM M.J., AGED 47 YEARS  
W/O. THANKACHAN, PLAMPARAMBIL HOUSE, VAYATHOOR AMSOM  
DESOM, P.O. ULIKKAL, TALIPARAMBA TALUK  
KANNUR DISTRICT.**
- 3. ALEYAMMA MUNDAPPALLIL , AGED 70 YEARS  
W/O. JOSEPH @ PAPPACHAN, MUNDAPPALLIL HOUSE  
PAYYAVOOR AMSOM, DESOM, P.O.PAYYAVOOR  
TALIPARAMBA TALUK, KANNUR DISTRICT.**

**R1-R2 BY ADV. SRI.CIBI THOMAS**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-10-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
-----

**EXHIBIT P1- THE TRUE COPY OF THE PLAINT IN OS.NO. 219/2012 ON THE FILE OF SUBORDINATE JUDGE, KANNUR.**

**EXHIBIT P2- THE TRUE COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER IN OS 219/2012 ON THE FILE OF SUBORDINATE JUDGE KANNUR DATED 2-1-2012.**

**EXHIBIT P3- THE TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE PETITIONER DATED 30-8-2013 OF THE SUBORDINATE JUDGE, KANNUR.**

**EXHIBIT P4- THE TRUE COPY OF THE ORDER DATED 18-1-2014 IN I.A.NO. 1812/2013 IN O.S. 219/2012 OF THE SUBORDINATE JUDGE, KANNUR.**

**RESPONDENT'S EXHIBITS:**  
-----

**NIL**

R.AV

//TRUE COPY//

PA TO JUDGE

**ABRAHAM MATHEW, J.**

-----  
**O.P.(C).No.1814 of 2014**  
-----

**Dated this the 20<sup>th</sup> day of October, 2015**

**J U D G M E N T**

Petitioner is the second defendant and respondents 1 and 2 are the plaintiffs in O.S.219 of 2012 of Sub Court, Kannur. The first defendant is the mother of the plaintiffs. The suit is for partition of immovable properties. The petitioner was impleaded as defendant on the allegation that he trespassed into the property and cut and removed certain tress. The relief prayed for against him is only injunction. The petitioner contended that he is in possession of the property on the basis of a document executed by the father of the plaintiffs, who is the husband of the first defendant. He filed an application to appoint a commissioner to identify the property on the basis of the title deed and survey plan. By Ext.P4 order the learned Sub Judge has dismissed it.

2. Heard.

3. In the nature of the case the plaintiffs should have filed a replication. The trial court shall direct them to file a replication. The petitioner/second defendant shall

produce his title deed. The trial court shall thereafter decide whether the commission application filed by the petitioner should be allowed or not. The impugned order is set aside.

In the result, this O.P is allowed Ext.P4 order is set aside. The trial court shall direct the plaintiffs to file replication. The petitioner/second defendant shall produce his title deed. Thereafter, the trial court is directed to consider the commission application filed by the petitioner.

sd/-  
**K. ABRAHAM MATHEW**  
**JUDGE**

R.AV

//True Copy//

PA to Judge