

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

OP(C).No. 2142 of 2014 (O)

IA.NO.3249/2014 IN OS.NO.472/2012 OF IST ADDL. SUB COURT, KOZHIKODE.

PETITIONER/PETITIONER/DEFENDANT NO.1:

**MUSTHAF MUHAMMED,
S/O. MUHAMMED KOYA, AGED 61,
CASA BLANCA APARTMENTS,
CHALAPPURAM P.O., KASABA AMSOM DESOM,
KOZHIKODE-673002.**

**BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.SRINATH GIRISH**

RESPONDENTS/RESPONDENT/PLAINTIFF:

**P.A.FATHIMA, W/O. MUHAMMED FAIZAL,
A-13, EXPRESS GARDEN, KOTTOLI AMSOM,
PARAYANCHERI DESOM, P.O.KUTHIRAVATTOM,
KOZHIKODE-673016.**

BY ADV. SRI.V.RAMKUMAR NAMBIAR

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1- TRUE COPY OF THE PLAINT DATED 6-7-2012 IN O.S. 472/2012 ON THE FILE OF THE 1ST ADDL. SUBORDINATE JUDGE, KOZHIKODE.
- EXHIBIT P2- TRUE COPY OF THE WRITTEN STATEMENT DATED 23-1-2013 SUBMITTED BY THE PETITIONER IN O.S. 472/2012 ON THE FILE OF THE 1ST ADDL. SUBORDINATE JUDGE, KOZHIKODE.
- EXHIBIT P3- TRUE COPY OF THE AFFIDAVIT DATED 19-8-2014 IN I.A. 3249/2014 IN O.S. 472/2012 ON THE FILE OF THE 1ST ADDL. SUBORDINATE JUDGE, KOZHIKODE.
- EXHIBIT P4- TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT DATED 19-8-2014 SUBMITTED BY THE PETITIONER IN O.S. 472/2012 ON THE FILE OF THE 1ST ADDL. SUBORDINATE JUDGE, KOZHIKODE.
- EXHIBIT P5- TRUE COPY OF THE ORDER DATED 26-8-2014 IN I.A. 3249/2014 IN O.S. 472/2012 ON THE FILE OF THE 1ST ADDL. SUBORDINATE JUDGE, KOZHIKODE.
- EXHIBIT P6- TRUE COPY OF THE SALE DEED DATED 27-6-2006 REGISTERED AS DOCUMENT NO. 2783/2006 OF SRO, CHEVAYUR.
- EXHIBIT P7- TRUE COPY OF THE RELEVANT PORTION OF THE RECONSTITUTED PARTNERSHIP DEED DATED 1-4-1995 IN RESPECT OF THE FIR 'PLANNING GROUP'.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

.....
O.P.(C) No.2142 of 2014
.....

Dated this the 4th day of June, 2015

J U D G M E N T

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The attempt of the petitioner was to press into service an additional written statement by way of further pleadings within the meaning of Order VIII Rule 9 of the Code of Civil Procedure, 1908 in a case wherein originally a written statement was filed. It is a suit for damages. There were originally two defendants.

2. The 1st defendant, who is the petitioner herein, has taken up a contention in the original written statement that the suit is bad for misjoinder as the then 2nd defendant was not a necessary party to the suit, according to the petitioner. Subsequently, the 2nd defendant died. On the basis of the specific contention taken by the petitioner that the 2nd defendant was not a necessary party to the suit and that the suit was bad for misjoinder as the 2nd defendant was

unnecessarily dragged into the suit, the plaintiff, who is the respondent herein, has opted not to implead any of the legal representatives of the deceased 2nd defendant.

3. It seems that when such a stand has been taken by the respondent, the petitioner has chosen to have recourse to the provisions contained in Order VIII Rule 9 CPC by filing an additional written statement and has sought leave of the court for filing such subsequent pleadings within the meaning of Order VIII Rule 9 CPC. The said request was turned down by the court below and leave has not been granted vide Ext.P5 order. The said order is under challenge.

4. Heard learned counsel for the petitioner and learned counsel for the respondent.

5. Learned counsel for the respondent has pointed out that earlier the petitioner had resorted to a specific contention of misjoinder by contending that the 2nd defendant was not at all a necessary party to the suit and

now, the present attempt of the petitioner is that he wants to thrust the liability on the shoulders of some other partners including the original 2nd defendant. Over and above it, there was no contention in the original written statement that the suit is bad for non-joinder of necessary parties. Presently, there is an attempt from the part of the petitioner to take up a new contention that the suit is bad for non-joinder of necessary parties as the other partners of a partnership firm including the 2nd defendant are not made parties to the suit. That is also a new contention, which did not find a place in the original written statement. The learned counsel for the respondent has pointed out that the present contention being resorted to by the petitioner in the additional written statement to be pressed into service, are contrary to the earlier stand resorted to by the petitioner in the original written statement and, therefore, the petitioner cannot be permitted to have recourse to any subsequent pleadings within the meaning of Order VIII Rule 9 CPC in

such case. This is not a case wherein inconsistent pleas are taken in the very same written statement, whereas, the attempt of the petitioner is to take up inconsistent pleas and contradictory contentions by way of an additional written statement, which is not permissible.

6. On going through Ext.P5 order and on hearing either side, this Court does not find any illegality, irregularity or jurisdictional error committed by the court below in passing Ext.P5 order and, therefore, Ext.P5 order is not liable to be interfered with under Article 227 of the Constitution.

In the result, this OP(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/04/06

// True Copy //

PA to Judge