

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN  
&  
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP(C).No. 2164 of 2014 (O)

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AGAINST THE ORDER IN I.A.NO.2327/2013, 3020/2013, 472/2014 AND  
527/2014 IN OS 331/2011 of PRINCIPAL SUB COURT,NORTH PARAVUR DATED  
25.07.2014

PETITIONER:

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C.A.HUSSAIN AGED 54 YEARS  
S/O.ABDUL RAHIMAN HAJI, RESIDING AT CHIRAMURIYIL  
KUNJUNNIKARA, ULIYANNOOR, KADUNGALLUR VILLAGE  
PARAVUR TALUK, ERNAKULAM DISTRICT.

BY ADVS.SRI.K.C.CHARLES  
SRI.M.POLY MATHAI  
SRI.VIMAL K.CHARLES  
SMT.A.T.RENJU

RESPONDENTS:

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1. SAINABA  
W/O.ABDUL RAHMAN HAJI, RESIDING AT CHIRAMURIYIL  
KUNJUNNIKARA, ULIYANNOOR, KADUNGALLUR VILLAGE  
PARAVUR TALUK  
ERNAKULAM DISTRICT (DIED ON 10/11/2011  
LEGAL HEIRS ARE IN THE PARTY ARRAY)

2. C.A.UMARUL FAROOQ,  
S/O.ABDUL RAHMAN HAJI, RESIDING AT CHIRAMURIYIL  
KUNJUNNIKARA, ULIYANNOOR, KADUNGALLUR VILLAGE  
PARAVUR TALUK, ERNAKULAM DISTRICT

3. C.A.SAFIA,  
W/O.KUNJU MOHAMMED, KADAVIL (H)  
EDAPPALLY MODERN LINE-682 024

4. C.A.RAHIMA,  
W/O.IBRAHM, KOOMBAYIL HOUSE, ARAFA  
CHANDIROOR KARA, ALAPPUZHA-688 001

5. C.A.RAMLATH,  
W/O.ISMAIL, T.C.48/466(16) MEHEFIL, KALLATTUMUKKU  
MANACAUD, THIRUVANANTHAPURAM-695001

6. C.A.RAFEEKHATH,  
W/O.IBRAHIM, CHATHENKERY, NEAR MARADU VILLAGE OFFICE  
NETTOOR-682 304

7. IBRAHIM,  
S/O.MOHAMMED, CHATHAKKARI, NEAR MARADU VILLAGE OFFICE  
NETTOOR-682 304

8. C.A.MOHAMMED KUNJU,  
S/O.ABDUL RAHMAN HAJI, CHIRAMURIYIL  
KUNJUNNIKARA, ULIYANNOOR, KADUNGALLUR VILLAGE  
PARAVUR TALUK, ERNAKULAM DISTRICT 683 108.

9. C.A.ABDUL KARIM,  
S/O.ABDUL RAHMAN HAJI, RESIDING AT CHIRAMURIYIL  
KUNJUNNIKARA, ULIYANNOOR, KADUNGALLUR VILLAGE  
PARAVUR TALUK, ERNAKULAM DISTRICT - 683 108.

10. C.A.ASHRAF ALI,  
S/O.ABDUL RAHMAN HAJI, RESIDING AT CHIRAMURIYIL  
KUNJUNNIKARA, ULIYANNOOR, KADUNGALLUR VILLAGE  
PARAVUR TALUK  
ERNAKULAM DISTRICT (SINCE THE 2ND PETITIONER HAS EXPRESSED  
UNWILLINGNESS TO JOIN IN THE ABOVE PETITION, THE 2ND  
PETITIONER IS IMPEADED IN THE ABOVE PETITION AS 10TH  
RESPONDENT.

R2-R7 BY ADV. SRI.L.P.ARAVINDAKSHAN  
BY ADV. SRI.C.K.GOVINDAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

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EXT P1: A TRUE COPY OF I.A NO.2327/2013 IN OS.331/2011 OF THE SUB COURT, NORTH PARAVUR.

EXT P2: A TRUE COPY OF THE ORDER IN IA.2327/2013 IN OS.331/2011 OF THE SUB COURT, NORTH PARAVUR DATED 25/7/2014.

EXT P3: A TRUE COPY OF ORDER IN R.P NO.30/2014 IN OPC NO.1184/2013 DATED 7/3/2014.

EXT P4: A TRUE COPY OF WILL DEED DATED 3/02/2001 EXECUTED BY MY LATE FATHER AND MOTHER BEQUEATHING AT PORTION OF PLAINT B SCHEDULE TO the ORIGINAL 3RD PLAINTIFF IN the YEAR 2001

EXT P5: THE TRUE COPIES OF THE LICENCE ISSUED TO ME FROM the ALUVA MUNICIPALITY

EXT P6: A TRUE COPY OF I.A. /2014 IN F.A.O. 147/13 FILED BY the PETITIONERS TO ACCEPT ADDITIONAL DOCUMENTSS

EXT P6A:A TRUE COPY OF LIST OF DOCUMENTS

EXT P7: A TRUE COPY OF ORDER OF THIS HONOURABLE COURT IN OP(C) 1184/2013 DATED 8/4/2013

EXT P8: A TRUE COPY OF R.P.30/2014 IN O.P(C).NO.1184/2013.

EXT P9: THE APPLICATION FILED BY THE DEFENDANTS WHO WERE TRANSPOSED the ADDITIONAL PLAINTIFFS FOR AMENDMENT OF PLAINT IN O.S.NO.331/2011

EXT P10:TRUE COPY OF COMMON ORDER IN I.A.399/2013, I.A.529/2013, I.A. 575/2013 IN O.S.331/2013 PASSED BY THE SUB COURT, NORTH PARAVUR DATED 4.3.2014

RESPONDENT(S) ' EXHIBITS:NIL

True Copy

P A to Judge

**THOTTATHIL B. RADHAKRISHNAN &  
SUNIL THOMAS, JJ.**

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**O.P(C).No.2164 of 2014**

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Dated this the 29<sup>th</sup> day of June, 2015

**JUDGMENT**

**Thottathil B. Radhakrishnan, J.**

Heard.

2. This original petition is instituted invoking Article 227 of the Constitution of India. Learned single Judge thought it appropriate to have it placed before the Division Bench in view of the fact that in an earlier round, the matter was dealt with by the Division Bench. The reason for that matter being decided by the Division Bench then, was that there was a connected F.A.O., an appeal against an order.

3. As is discernible from Ext.P7, which is the judgment in the earlier case, this matter arises from a suit for partition which is instituted by four plaintiffs with seven defendants on array. The properties sought to be partitioned belonged to late C.K.Abdul Rahman Haji. His wife, Sainabha who is the first defendant is no more. After delivery of the written statement, the plaintiffs applied for withdrawal of the suit. Defendants 2 to 7, therefore, applied for transposition as plaintiffs. The first defendant was

dead by then. Transposition as sought for was allowed since the suit is one for partition. The petitioner before us is the original plaintiff No.3. He sought for transposition as a defendant since he wanted to challenge the eligibility of the daughters of C.K.Abdul Rahiman Haji to claim partition. The court below passed the impugned order indicating that the transposition of the plaintiff as a defendant may not be possible in strict terms of Order XXIII Rule 1A of the C.P.C. and that the petitioner before us can also be a party to the suit for partition and can raise independent claim as to the non-partibility of any particular item and he can also apply for his separate right as if he is contesting the claims of the rival parties.

Having regard to the nature of the impugned order, we do not see any ground to interfere with it in exercise of jurisdiction under Article 227 of the Constitution of India because, we are of the view that impugned order does not result in any manifest miscarriage of justice. After delivery of pleadings, the modality of the trial and the resultant position on conclusion of trial would depend on various factors that would emerge on the basis of such pleadings. Those matters would stand left open for adjudication,

as may be ultimately found necessary, in the suit. Without prejudice to that, this original petition is dismissed leaving open the rights to the petitioner to place such further pleadings, as are permissible in accordance with law, in the suit.

Sd/-

**THOTTATHIL B. RADHAKRISHNAN**  
**Judge**

Sd/-

**SUNIL THOMAS**  
**Judge**

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