

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

OP(C).No. 2257 of 2014 (O)

OS 323/1987 OF I ADDITIONAL SUB COURT, KOZHIKODE

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PETITIONER(S):

- * O.S.BALASUBRAMANIAN, AGED 68 YEARS, (DIED),
S/O.SUNDARAN CHETTIYAR, 7, DAMU NAGAR,
THELUNGU PALAYAM, COIMBATORE, TAMILNADU STATE.
 - * ADDITIONAL PETITIONERS 2-5 IMPEADED.
 - 2. B.LAKSHMI, AGED 59 YEARS,
W/O O.S.BALASUBRAMANIAN, 7, DAMU NAGAR,
THELUNGU PALAYAM, COIMBATORE, TAMILNADU STATE.
 - 3. P. GOURI, AGED 43 YEARS,
D/O BALASUBRAMANIAN, 7, DAMU NAGAR,
THELUNGU PALAYAM, COIMBATORE, TAMILNADU STATE.
 - 4. H.POORNIMA, AGED 39 YEARS,
D/O BALASUBRAMANIAN, 7, DAMU NAGAR,
THELUNGU PALAYAM, COIMBATORE, TAMILNADU STATE.
 - 5. M.UMAMAHESH, AGED 35 YEARS,
S/O.BALASUBRAMANIAN, 7, DAMU NAGAR,
THELUNGU PALAYAM, COIMBATORE, TAMILNADU STATE.
 - * THE LEGAL HEIRS OF THE DECEASED PETITIONER ARE IMPEADED
AS ADDITIONAL PETITIONERS 2 TO 5 AS PER ORDER DATED 20.05.2015
IN IA 5506/15.
- BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT(S):

1. O.S.DANDAYUDHAN, AGED 69 YEARS,
S/O.SUBRAMANIAN CHETTIYAR, KASAMA AMSOM,
KARIAKUNNU DESOM, KOZHHIKODE - 673 001.

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2. O.S.NARASIMHAN, AGED 65 YEARS,
S/O.SUBRAMANIAN CHETTIYAR, KASAMA AMSOM,
KARIAKUNNU DESOM, KOZHAIKODE - 673 001.
- * 3. KRISHNAVENI AMMAL,
W/O.SUNDARAN CHETTIYAR, 1ST AGRAHARAM, SALEM,
TAMILNADU-636 001. (DIED AND DELETED)
4. O.S.BALAKRISHNAN,
S/O.SUNDARAN CHETTIYAR, 1ST AGRAHARAM, SALEM,
TAMILNADU-636 001.
5. O.S.DEVENDRAN,
S/O.SUNDARAN CHETTIYAR, 1ST AGRAHARAM, SALEM,
TAMILNADU-636 001.
- * 6. O.V.GOVINDARAJALU CHETTIYAR,
S/O.VENKATARAMAN CHETTIYAR, NAGARAM AMSOM DESOM,
KOZHAIKODE-673 314 (DIED AND DELETED)
7. VASAVA AMBAL,
W/O.GOVINDARAJALU CHETTIYAR, VASAI ILLAM,
PONNUMALI PARAMBA, NEAR BABY MEMORIAL HOSPITAL,
KOZHAIKODE-673 004.
8. VASALAKSHMI,
D/O.GOVINDARAJALU CHETTIYAR, 188, BAZAR STREET,
POLLACHI, TAMIL NADU-642 004.
9. CHANDRA SEKHARAN,
S/O.GOVINDARAJALU CHETTIYAR, VASAI ILLAM,
PONNUMALI PARAMBA, NEAR BABY MEMORIAL HOSPITAL,
KOZHAIKODE-673 004.
10. USHADEVI,
W/O.DR.JAYAPRAKASH, 27TH MAIN ROAD, J.P. NAGAR,
KARNATAKA-560 078.
- * THE DECEASED RESPONDENTS NO.3 AND 6 ARE DELETED FROM THE
PARTY ARRAY AS PER ORDER DTD.12.12.2014 ON MEMO DTD.11.11.2014
BEARING C.F.NO.2944/2014.
- R1 BY ADVS. SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SMT.VANDANA MENON
R1 & R5 BY ADV. SRI.K.JAYESH MOHANKUMAR
R7 & R9 BY ADVS. SRI.BIJU ABRAHAM
SRI.B.G.BHASKAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1.TRUE COPY OF THE AFFIDAVIT WITH PETITION IN IA NO.2955/2013 IN
O.S NO.326/1987 OF THE 1ST ADDL. SUB COURT, KOZHAIKODE
DATED 11/6/2013.

EXT.P2.TRUE COPY OF THE ORDER IN IA NO.2955/2013 IN S NO.326/1987
OF THE 1ST ADDL. SUB COURT, KOZHAIKODE DATED 24/7/2014.

EXT.P3.TRUE COPY OF THE ORDER DATED 23/7/2014 IN IA NO.2342/2014 IN O.S.
NO.326/1987 OF THE 1ST ADDL. SUB COURT, KOZHAIKODE.

EXT.P4.TRUE COPY OF THE ORDER IN IA NO.2954/2013 IN OS NO.326/1987
OF THE 1ST ADDL. SUB COURT, KOZHAIKODE DATED 5/9/2014.

RESPONDENT(S)' EXHIBITS:

EXT.R9(a): A TRUE COPY OF THE INTER SE RELATIONSHIP OF THE PARTIES IS
SHOWN IN THE FORM OF A DIAGRAM OF FAMILY TREE SHOWING THE
RANK OF THE PARTIES IN OS.326/1987 ON THE FILES OF SUB COURT,
KOZHAIKODE.

EXT.R9(b): A TRUE COPY OF THE PLAINT IN OS.163/2011 ON THE FILES OF SUB
COURT, KOZHAIKODE.

EXT.R9(c): A TRUE COPY OF THE AMENDMENT APPLICATION FILED AS IA.6022/2013
IN OS.163/2011 ON THE FILES OF SUB COURT, KOZHAIKODE.

EXT.R9(d): A TRUE COPY OF THE JUDGMENT IN OP(C) NO.4423/2013 DTD.29.8.2014
OF THIS HON'BLE COURT.

//TRUE COPY//

P.S.TO JUDGE

Msv/

B.KEMAL PASHA, J.

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Dated this the 7th day of July, 2015

J U D G M E N T

The petitioner is the 5th defendant in O.S.No.326 of 1987 of the Subordinate Judge's Court, Kozhikode. Even though, he is in the party array from 1987 onwards, he had not filed the written statement. It seems that he has filed I.A.No.2955 of 2013 along with a written statement before the court below. Through I.A., he has sought for the acceptance of the written statement. The court below through Exhibit P2 order has declined the said request. He has also filed I.A.No.2342 of 2014 seeking permission for the production of a document. The said request was also turned down. The said orders are under challenge.

2. Heard the learned counsel for the petitioner and the learned counsel for respondent Nos.1 and 5.

3. It seems that even though the petitioner had not filed the written statement, he was not set *exparte* by the

court below in the suit. He was not proceeded against under Order VIII Rule 10 CPC for his failure to file the written statement. Matters being so, the court below ought not to have rejected the written statement filed by him along with I.A.No.2955 of 2013. When the court below has not declared him *exparte* and when he was not proceeded against under Order VIII Rule 10 CPC, the court below ought to have accepted the written statement. Therefore, Exhibit P2 order is liable to be set aside.

4. Regarding Exhibit P3 order also, it seems that the court below ought to have permitted the petitioner to produce the document. The admissibility of such a document in evidence is yet another question which has to be decided at the time of recording evidence. Therefore, Exhibit P3 order is also set aside.

In the result, this Original Petition (Civil) is allowed and Exhibits P2 and P3 orders are set aside. The court below is directed to accept the written statement filed by the

petitioner and permit him to produce the document as prayed for. Being a suit of 1987, the court below shall make every endeavour to dispose of the suit, as expeditiously as possible, at any rate within in a period of six months from the date of receipt of a copy of this judgment.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/7/7/15