

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

OP(C).No. 2486 of 2014 (O)

OS. NO.8/2008 OF ADDITIONAL SUB COURT, PALAKKAD.

.....

PETITIONER(S):

**K.K. KABEER, S/O.KUNHU SAHIB,
AGED 65 YEARS, AMBATTUPARAMBU, VADAKANCHERY,
MANGALAM, ALATHUR TALUK, PALAKKAD DISTRICT-678 706.**

BY ADV. SRI.V.A.AJAI KUMAR.

RESPONDENT(S):

- 1. BEEVI K.M, W/O.ABDUL NAZAR,
AGED ABOUT 35 YEARS, REPRESENTED BY HER
POWER OF ATTORNEY HOLDER SARFUDEEN,
S/O.BEERAN KUTTY, AGED 49 YEARS, CHEENIKKAL VEEDU,
THRIKKANDIYUR VILLAGE, THRIKKANIDYUR P.O.,
MALAPPURAM DISTRICT-676 104.**
- 2. K.H.ABDUL SHIBI, S/O.LATE K.K.HANEEFA,
AGED 34 YEARS, SHEREENA MANZIL,
RAYAMANAGLAM P.O., KURUPPAMPADI,
PERUMBAVOOR, ERNAKULAM DISTRICT-683 545.**
- 3. BABU, S/O.LATE K.K.HANEEFA,
AGED 40 YEARS, SHEREENA MANZIL,
RAYAMANAGLAM P.O., KURUPPAMPADI,
PERUMBAVOOR, ERNAKULAM DISTRICT-683 545.**
- 4. SHEREENA, D/O.LATE K.K.HANEEFA,
AGED 42 YEARS, 1ST MILE, NEAR JUMA MASJID,
PERUMBAVOOR, ERNAKULAM DISTRICT-683 542.**
- 5. BULKEES, D/O.LATE K.K.HANEEFA,
AGED 49 YEARS, AMBAKKULAM, VADAKKANCHERY,
ALATHUR TALUK, PALAKKAD - 678 683.**
- 6. MANAF, S/O.LATE K.K.HANEEFA,
AGED 50 YEARS, AMBAKKULAM,
VADAKKANCHERY, ALATHUR TALUK,
PALAKKAD - 678 683.**

OP(C).No. 2486 of 2014 (O)

**7. KAMARUNEESA, W/O.LATE K.K.HANEEFA,
AGED 65 YEARS, SHEREENA MANZIL,
RAYAMANAGLAM P.O., KURUPPAMPADI,
PERUMBAVOOR, ERNAKULAM DISTRICT-683 545.**

**8. SUHARA, W/O.LATE K.K.HANEEFA,
AGED 69 YEARS, AMBAKKULAM,
VADAKKANCHERY, ALATHUR TALUK,
PALAKKAD - 678 683.**

R4 BY ADV. SRI.G.S.REGHUNATH.

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 13-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1. TRUE COPY OF THE PLAINT DATED 31/12/2007 FILED BY THE PLAINTIFF IN OS NO.8/2008 ON THE FILE OF THE ADDL. SUB COURT, PALAKKAD.
- EXT.P2. TRUE COPY OF THE WRITTEN STATEMENT DATED 08/04/2008 BY THE DEFENDANT IN OS NO.8/2008 ON THE FILE OF THE ADDL. SUB COURT, PALAKKAD.
- EXT.P3. TRUE COPY OF THE IA NO.829/2010 DATED 02/03/2010 FILED BY THE PETITIONER IN OS NO.8/2008 ON THE FILE OF THE ADDL. SUB COURT, PALAKKAD.
- EXT.P4. TRUE COPY OF THE IA NO.830/2010 DATED 02/03/2010 FILED BY THE PETITIONER IN OS NO.8/2008 ON THE FILE OF THE ADDL. SUB COURT, PALAKKAD.
- EXT.P5. TRUE COPY OF THE OBJECTION DATED 17/06/2010 FILED BY THE PLAINTIFF TO IA. NO. 829/2010.
- EXT.P6. TRUE COPY OF THE OBJECTION DATED 17/06/2010 FILED BY THE PLAINTIFF TO IA. NO. 830/2010.
- EXT.P7. TRUE COPY OF THE JUDGMENT DATED 15/12/2010 IN OPC NO.826/2010 PRONOUNCED BY THIS HONOURABLE COURT.
- EXT.P8. TRUE COPY OF THE OBJECTION DATED 29/08/2013 FILED BY THE RESPONDENTS 3, 4 AND 7 TO IA. NO.829/2010.
- EXT.P9. TRUE COPY OF THE OBJECTION DATED 29/08/2013 FILED BY THE RESPONDENTS 3, 4 AND 7 TO IA. NO.830/2010.
- EXT.P10. TRUE COPY OF THE ORDER DATED 25/09/2014 PASSED BY THE LEARNED ADDL. SUB COURT PALAKKAD IN IA NO.829/2010.
- EXT.P11. TRUE COPY OF THE ORDER DATED 25/09/2014 PASSED BY THE LEARNED ADDL. SUB COURT, PALAKKAD IN IA NO.830/2010.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P. BHAVADASAN, J.

O.P.(C). No. 2486 of 2014

Dated this the 13th day of January, 2015.

JUDGMENT

Under challenge is Ext.P10 order in I.A. No. 829 of 2010 in O.S. 8 of 2008 whereby the court below dismissed the application filed by the petitioner before this Court to implead the legal heirs of one deceased K.K. Haneefa.

2. The plaintiff instituted a suit O.S.8 of 2008 on the allegation that the defendant in the suit has trespassed into a portion of the property and she seeks recovery of that portion of the property on the strength of her title.

3. It is not in dispute that the property originally belonged to one K.K.Haneefa and from whom the vendor of the plaintiff purchased the property.

4. The claim of the defendant seems to be that Haneefa had borrowed a sum of Rs.10 Lakhs and executed an equitable mortgage in his favour. He, therefore, in the

present suit wanted to implead the legal heirs of Haneefa, who is no more. The court below found that there is no nexus between the claim made by the defendant and the plaintiff claim and refused to allow the application to implead the legal heirs of Haneefa.

5. Learned counsel for the petitioner before this Court contended that his remedy against Haneefa needs to be enforced and for that purpose the legal heirs are to be in the party array.

6. It is to be noticed that the suit is one for recovery of possession of property. The claim of the plaintiff is that defendant in the suit trespassed into her property and she seeks recovery of that portion of the property.

7. Even assuming that the defendant has an equitable mortgage in his favour, one fails to understand how that can be enforced in a suit for recovery of possession. That is an independent claim and that right than can be enforced through proper proceedings. At worst

what could be said is that the property which is in the hands of the plaintiff is subject to mortgage. But to say that the legal heirs of Haneefa should be brought on the party array to agitate their claim cannot be countenanced.

8. The learned counsel for the petitioner contended that even distinct and independent claims can be preferred by way of counter claim and claims may be made against co-defendants also.

9. That may be so. In the case on hand what the petitioner wants is to implead strangers to the suit as defendants to have the dispute with them resolved.

10. That exercise cannot be undertaken in the present suit. The plaintiff has to decide as to who should be the parties to the suit. Defendant cannot compel the plaintiff to implead persons of their choice. Therefore, it is felt that the court below was perfectly justified in dismissing the application for impleading the legal heirs of Haneefa.

This Original Petition is without merits and it is only to be dismissed. I do so.

P. BHAVADASAN,
JUDGE

sb.