

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

OP(C).No. 2614 of 2014 (O)

**ORDER DATED 13-10-2014 IN IA.NO.280/2014 IN OS 22/2009 OF MUNSIFF COURT,
PARAVOOR, KOLLAM**

. . . .

PETITIONER(S):

**NISAR, AGED 32,
S/O.ABDUL SALIM, VALIYAVILA VEEDU,
THAZHATHUMALA P.O., KOLLAM.**

**BY ADVS.SRI.P.MARTIN JOSE
SRI.P.PRIJITH**

RESPONDENT(S):

- 1. SANTHAMMA,
D/O.METTILDA, VADAKKEVILA VEEDU, PULLICHIRA,
THEKKUMKARA CHERRY, MAYYANAD VILLAGE,
MAYYANAD P.O., KOLLAM - 691 303.**
- 2. USHA YESUDASAN,
D/O.SANTHAMMA, VADAKKEVILA VEEDU, PULLICHIRA,
THEKKUMKARA CHERRY, MAYYANAD VILLAGE,
MAYYANAD P.O.,KOLLAM - 691 303.**
- 3. RAJESH,
S/O.SANTHAMMA, VADAKKEVILA VEEDU,
PULLICHIRATHEKKUMKARA CHERRY, MAYYANAD VILLAGE,
MAYYANAD P.O., KOLLAM - 691 303.**
- 4. LINTON FERNANDEZ,
S/O.JOSEPH FERNANDEZ, MUTHIRAVILA VEEDU,
KAKKOTTUMoola P.O., MAYYANAD CHERRY, MAYYANAD VILLAGE,
KOLLAM - 691 303.**
- 5. ANEE REETHA LINTON,
D/O.LINTON FERNANDEZ, MUTHIRAVILA VEEDU,
KAKOOTUMoola P.O., MAYYANAD, KOLLAM - 691 303.**

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6. SHAHIDA,
W/O.MAJA BASHEER, OLIPPIL VEEDU, NADUVILAKKARACHERRY,
MAYYANAD TALUK, KOLLAM - 691 303.
7. ABBAKKAR,
VALIYAVILA VEEDU, THAZHUTHALA P.O., KOTTIYAM,
KOLLAM, PIN - 691 571.
8. ANSAR, AGED 34 YEARS,
S/O.ABDUL SALIM, VALIYAVILA VEEDU,
THAZHUTHALA P.O.,KOTTIYAM, KOLLAM, PIN - 691 571.

R1-R3 BY ADVS. SRI.C.R.VIJAYAKUMARAN PILLAI
SRI.R.SANTHOSH (VARKALA)
R4 & R5 BY ADV. SRI.GEORGE SEBASTIAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF PLAINT IN OS NO.22 OF 2009 FILED BEFORE THE MUNSIFF COURT, SOUTH PARAVUR, KOLLAM.
- EXT.P-2: TRUE COPY OF WRITTEN STATEMENT IN O.S.NO.22/2009 DATED 16.7.2013 FILED BY THE ADDITIONAL DEFENDANTS 4 AND 5.
- EXT.P-3: TRUE COPY OF I.A.NO.1049/2013 IN O.S.NO.22/2009 DATED 12.8.2013 FILED BY THE DEFENDANTS 4 AND 5.
- EXT.P-4: TRUE COPY OF OBJECTION TO I.A.NO.1049/2013 IN O.S.NO.22/2009 FILED BY THE PLAINTIFFS BEFORE THE MUNSIFF COURT, SOUTH PARAVUR, KOLLAM.
- EXT.P-5: TRUE COPY OF I.A.NO.280/2014 IN O.S.NO.22/2009 FILED BY THE PLAINTIFFS BEFORE THE MUNSIFF COURT, PARAVUR, KOLLAM.
- EXT.P-6: TRUE COPY OF OBJECTION TO EXHIBIT P5 PETITION IN O.S.NO.22/2009 FILED BY THE PETITIONER HEREIN AND 8TH RESPONDENT HEREIN BEFORE THE MUNSIFF COURT, PARAVUR, KOLLAM.
- EXT.P-7: TRUE COPY OF ORDER IN I.A.NO.280/2014 IN O.S.NO.22 OF 2009 DATED 13.10.2014 OF MUNSIFF COURT, PARAVUR, KOLLAM.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B.KEMAL PASHA, J.

.....
O.P.(C) No. 2614 of 2014
.....

Dated this the 19th day of June, 2015

J U D G M E N T

The 3rd defendant in O.S.No.22/09 of the Munsiff/Magistrate's Court, S.Paravur had purchased the property in question even prior to the institution of the suit. Without impleading the 3rd defendant in the party array the suit was filed. Subsequently, the 3rd defendant was made a party to the suit in the year 2011. It seems that the petitioners had purchased the property from the 3rd defendant in the year 2011. Petitioner, respondents 7 and 8 herein, and the 3rd defendant were later impleaded in the suit. It seems that defendants 1 and 2 and the 3rd defendant are not contesting the suit and they were declared *exparte*.

It is alleged that the plaintiffs, with a view to getting an *exparte* decree, has sought for the removal of the petitioner and respondents 7 and 8 herein from the party array, through I.A.No.280/2014. The same was strongly resisted by the petitioner and respondents 7 and 8 through Ext.P6 counter. The court below has passed Ext.P7 order as, "Heard. IA allowed." The said order is under challenge.

2. Heard the learned counsel for the petitioner and the learned counsel for respondents 1 to 3.

3. Much discussion is not required to conclude that Ext.P7 order is a cryptic order. Even though a detailed counter has been filed in the matter, it seems that the court below has not cared to address either the contents of the IA or the contentions resorted to by the petitioner and respondents 7 and 8. Without any discussion, the court below has simply allowed the IA through Ext.P7 order. Ext.P7 is not a speaking order. The course adopted by the court below cannot be appreciated. Ext.P7 is liable to be

set aside.

In the result, this Original Petition is allowed and Ext.P7 order stands set aside. The court below is directed to pass a speaking order on IA 280/2014, after hearing both sides.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge