

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

OP(C).No. 2733 of 2014 (O)

**I.A.NO.5323/2013 IN O.S.NO.512/2011 OF ADDITIONAL SUB COURT,
IRINJALAKUDA**

PETITIONER(S)/2ND RESPONDENT/2ND DEFENDANT :

**ALLI, AGED 52 YEARS,
D/O.BALAN, POOTHURUTHI VEEDU, KALLUR VILLAGE,
ATHUR DESOM, MUKUNDHAPURAM TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENT(S)/PETITIONERS/PLAINTIFFS/DEFENDANTS :

- 1. SANGEETH,
S/O.CHEENATH UNNI @ VELAYUDHAN,
ABALLUR VILLAGE AND DESOM, MUKUNDAPURAM TALUK- 680 321.**
- 2. SARITHA,
W/O.CHEMBRAVEETIL DILEEP AND D/O.CHEENATH UNNI @
VELAYUDHAN, ABALLUR VILLAGE AND DESOM,
MUKUNDAPURAM TALUK- 680 321.**
- 3. SARADHA, W/O.CHEENATH UNNI @ VELAYUDHAN,
AMBALLUR VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
PRESENT ADDRESS-SARADHA @ SABITHA, C/O.SHOUKATH ALI,
VALIYAKATH VEEDU, KATTOOR VILLAGE AND DESOM,
MUKUDNAPURAM TALUK- 680 110.**
- 4. SOUTH MALABAR GRAMIN BANK,
REPRESENTED BY MANAGER, SMG BANK, ABALLUR BRANCH,
ABALLUR VILLAGE, AND DESOM, MUKUNDAPURAM TALUK- 680 321.**

R4 BY ADV. SRI.T.R.RAVI, SC, S.MALABAR G. BANK

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 2733 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: A TRUE COPY OF THE PLAINT IN O.S NO.512/2011
 DATED 24/08/2011.**
- EXT.P2: A TRUE COPY OF THE OBJECTIONS/COUNTER CLAIMS
 DATED 04/04/2013.**
- EXT.P3: A TRUE COPY OF THE AMENDMENT APPLICATION IN
 I.A NO.5323/2013 IN O.S NO.512/2011 DATED 17/12/2013.**
- EXT.P4: A TRUE COPY OF THE OBJECTION IN I.A NO.5323/2013 IN
 O.S NO.512/2011 DATED 06/01/2014.**
- EXT.P5: A TRUE COPY OF THE ORDER IN I.A NO.5323/2013 IN
 O.S NO.512/2011 DATED 30/09/2014.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

O.P.(C)No.2733 of 2014

Dated this the 3rd day of September, 2015.

J U D G M E N T

The petitioner, a 2nd defendant in the suit for partition and its consequential injunction, has approached this Court aggrieved by the rejection of her application for amendment by deleting the prayer in the suit for partition.

2. Admittedly, the plaintiff in the suit sought a partition of the property claiming that they are in joint and co-ownership of the property with the 1st defendant. It is stated that pending the suit, the 1st defendant transferred the entire right in favour of the plaintiffs. Therefore, the plaintiffs sought a prayer to delete the prayer for partition.

3. In as much as the prayer for partition is only between the plaintiffs and the 1st defendant, this Court is of the view that the court below is justified in allowing the prayer as it may not affect the right of the 2nd defendant in the suit, the petitioner herein, to agitate their counter claim

alleged to have been filed claiming that neither the plaintiff nor the 1st defendant has no right over the plaint schedule property. Therefore, this Court is of the view that, no prejudice will be caused, if the application is allowed. The 2nd defendant is free to independently challenge the title of the plaintiff as well as the 1st defendant in the suit. With that liberty, this original petition is disposed of.

Sd/-
A.MUHAMED MUSTAQUE,
Judge.

ami/

//True copy//

P.A.to Judge