

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

OP(C).No. 2759 of 2014 (O)

IA.NO.2090/2014 IN OS.135/2009 OF MUNSIFF'S COURT, PATHANAMTHITTA

PETITIONERS/DEFENDANTS 4-8:

1. **M.M.MARIAMMA,**
MALAYIL VEEDU, KALLIMEL MURI, THAZHAKKARA VILLAGE
MAVELLIKKARA TALUK, ALAPPUZHA.
2. **PRASAD,**
THENGUVILAYIL HOUSE, NARIYAPURAM VAYALA VADAKKEKARA
VALLICODE VILLAGE, KOZHENCHERRY TALUK, PATHANAMTHITTA.
3. **MARIAYAMMA THANKACHAN,**
VINO COTTAGE, VETTIPRAM MURI, PATHANAMTHITTA.
4. **ABRAHAM,**
KAVUTHUNDIL HOUSE, NARIYAPURAM, VALLICODE VILLAGE,
PATHANAMTHITTA.
5. **M.G.GEORGE,**
KALLETHU PITHEN VEEDU, ANANDAPALLY
ADOOR VILLAGE & TALUK, PATHANAMTHITTA.
(REPRESENTED BY POWER-OF-ATTORNEY
HOLDER THANKACHAN, S/O.GEORGE,
TABOR BUNGALOW, VALLICODE-KOTTAYAM VILLAGE,
VALLICODE-KOTTAYAM MURI, VAKAYAR.P.O, KONNY,
PATHANAMTHITTA-689698).

BY ADVS.SRI.GENS GEORGE ELAVINAMANNIL
SRI.ABHILASH S.FRANCIS

RESPONDENTS/PLAINTIFFS,DEFENDANTS 1-3 & ADDITIONAL 9TH DEFENDANT:

1. **PERUMTHITTA MADOM,**
NARIYAPURAM VAYALA VADAKKEKARA,
VALLICODE VILLAGE, KONNI,
PATHANAMTHITTA-689659,
REPRESENTED BY PLAINTIFFS 2 & 3.

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2. SANTHOSH KUMAR,
MAMPUZHA MADOM, MANAPPALLY VADAKKU MURI
THAZHAVA VILLAGE, KARUNAGAPPALLY TALUK, KOLLAM-690523.
3. NARAYANAN POTTI,
AYARVELI MADOM, MANAPPALLY VADAKKU MURI,
THAZHAVA VILLAGE, KARUNAGAPPALLY TALUK, KOLLAM-690523.
4. NARAYANAN POTTI,
KOCHILETHU MADOM (DEAD), MANAPPALLY VADAKKU MURI
THAZHAVA VILLAGE, KARUNAGAPPALLY TALUK, KOLLAM-690523.
5. SUKUMARAN NAMPOOTHIRI,
PAVITHRAMANGALATHU MADOM, MANAPPALLY VADAKKU MURI,
THAZHAVA VILLAGE, KARUNAGAPPALLY TALUK, KOLLAM-690523.
6. KRISHNAN NAMPOOTHIRI,
SOUPARNIKA PERISSERI MURI, PULIYOOR VILLAGE,
CHENGANNOOR, ALAPPUZHA-689510.
7. SREEMAN NAMPOOTHIRI,
PERUMTHITTA MADOM, NARIYAPURAM VAYALA VADAKKUMURI,
VALLICODE VILLAGE, KONNI, PATHANAMTHITTA-689648,
REPRESENTED BY POWER-OF-ATTORNEY HOLDER P.R.SASIDHARAN NAIR,
AGED 67 YEARS, S/O RAGHAVAN PILLAI, PANICKARETHU HOUSE,
NARIYAPURAM.P.O, VALLICODE VILLAGE,
PATHANAMTHITTA-689659.

BY ADV. SRI.R.RAMADAS

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1** **COPY OF THE POWER-OF-ATTORNEY DATED 12-03-2012,EXECUTED BY THE PETITIONERS,IN FAVOUR OF THANKACHAN**
- EXT.P2** **COPY OF THE PLAINT IN O.S.135/2009 ON THE FILE OF THE MUNSIFF'S COURT,PATHANAMTHITTA**
- EXT.P3** **COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER'S IN O.S.135/2009 ON THE FILE OF THE MUNSIFF'S COURT,PATHANAMTHITTA**
- EXT.P4** **COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE PETITIONER IN O.S.135/2009 ON THE FILE OF THE MUNSIFF'S COURT,PATHANAMTHITTA**
- EXT.P5** **COPY OF I.A.2090/2014 IN O.S.135/2009 ON THE FILE OF THE MINSIFF'S COURT,PATHANAMTHITTA**
- EXT.P6** **COPY OF THE STATEMENT OF OBJECTION FILED BY THE PETITIONERS TO I.A 2090/2014 IN O.S.135/2009 ON THE FILE OF THE MINSIFF'S COURT,PATHANAMTHITTA**
- EXT.P7** **COPY OF THE ORDER DATED 10-10-2014 IN I.A.2090/2014 IN O.S.135/2009 ON THE FILE OF THE MINSIFF'S COURT,PATHANAMTHITTA.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B.KEMAL PASHA, J.

.....
O.P.(C) No.2759 of 2014
.....

Dated this the 3rd day of July 2015

J U D G M E N T

In the suit before the court below, Ext.P5 I.A.No.2090/2014 was filed seeking amendment of the plaint. Through Ext.P7 order, the court below has allowed the amendments to be carried out on condition of payment of cost of ₹1,000/- within seven days. Within the prescribed time the cost was paid and the petitioners received the cost. Now, it is after receiving the cost, the petitioners have filed this original petition challenging Ext.P7 order.

2. Heard the learned counsel for the petitioners and learned counsel for the respondents.

3. The learned counsel for the petitioners has relied on the decision in ***Bhau Ram v. Baij Nath Singh and***

others[AIR 1961 SC 1327] wherein it was held that one cannot be deprived of his statutory right of appeal, even in a case wherein the benefit under the decree was obtained by the party who challenges the order itself. This is not a statutory remedy prescribed; whereas the petitioner is inviting this Court to exercise its powers under Article 227 of the Constitution of India. When there is no statutory right of appeal in the matter, the decision noted *supra* has no application at all. The petitioner cannot approbate and reprobate. After having conceded to the conditional order by accepting the cost, the petitioner is not expected to file this original petition and hence this petition is only to be dismissed.

In the result, this Original Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

// true copy // P.S. to Judge.