

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C) .No. 2778 of 2014 (O)

AGAINST THE ORDER IN I.A.904/14 IN OS 230/2011 of SUB COURT,KATTAPPANA

PETITIONER:

DR. JOB JOHN AGED 67 YEARS
S/O.VARKEY JOB, PALAKUNNEL HOUSE, NEDUMKUNNAM KARA
KARUKACHAL VILLAGE, CHANGANASSERY TALUK.

BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI. JOMON.K. CHACKO

RESPONDENTS:

1. M. SELVY, AGED 38 YEARS
W/O.ANDAVAR, ANNAI ILLAM, PAMPADUMPARA KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

2. P.DARMAR, AGED 43 YEARS
S/O.PERIYA ARASAN, ANNAI ILLAM, PAMPADUMPARA KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

3. P.AZHAKAR, AGED 34 YEARS
S/O.PERIYA ARASAN, ANNAI ILLAM, PAMPADUMPARA KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

4. P.ANDAVAR
S/O.PERIYA ARASAM, ANNAI ILLAM, PAMPADUMPARA KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

5. P.RATHNAMMAL, AGED 43 YEARS
W/O.PERIYASWAMI, RATHNAGIRI ESTATE, PAMPADUMPARA KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

6. P.AYYAMMAL, AGED 51 YEARS
D/O.PERIYA ARASAN, ANNAI ILLAM, PAMPADUMPARA KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

7. M.ESWARAN, AGED 34 YEARS
S/O.MUNIYANDI, RATHNAGIRI ESTATE, PAMPADUMPARA KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

8. VINAYAN
S/O.DAMODARAN, MAMPARAMBIL HOUSE, KADASSIKADAV KARA
VANDANMEDU VILLAGE, IDUKKI DISTRICT, 685518.

9. P.SUNDHARA RAJAN
S/O.PONNAYYA, PARVATHY RAJAN ILLAM, THIRUMANGALAM KARA
THIRUMANGALAM TALUK, MADURAI DISTRICT, 625523.

10. SHAJI
S/O.JOSEPH, CHERUPARAMBIL HOUSE, POTTANKADU KARA
BAISONVALLY VILLAGE, UNDUMBANCHOLA TALUK
IDUKKI DISTRICT, 685561.

11. C.MARNADU
S/O.CHINNAN, DOOR NO.1/16, THENI ROAD
USALAMPETTY KARA, USALAMPETTY VILLAGE
MADURAI DISTRICT, 625513.

12. AUGUSTINE
S/O.JOSEPH, PARAMBIL HOUSE, VALLAKKADAVU KARA
KATTAPPANA VILLAGE, IDUKKI TALUK, IDUKKI DISTRICT
685518.

R1 -R 4 BY ADV. SRI.A.C.DEVASIA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015 ALONG
WITH O.P(C).NO.2862 OF 2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT-P1: TRUE PHOTOSTAT COPY OF THE PLAINT IN O.S.NO.230/2011 ON THE FILES OF HONOURABLE SUB COUR, KATTAPPANA.

EXHIBIT-P2: TRUE PHOTOSTAT COPY OF PLAINT IN O.S.NO.30/2007 ON THE FILES OF HONOURABLE SUB COURT, KATTAPPANA.

EXHIBIT-P3: TRUE PHOTOSTAT COPY OF WRITTEN STATEMENT IN O.S.NO.30/2007 ON THE FILES OF THE HONOURABLE SUB COURT, KATTAPPANA.

EXHIBIT-P4: TRUE PHOTOSTAT COPY OF IMPLEADMENT APPLICATION IN O.S.NO.230/2011 ON THE FILES OF HONOURABLE SUB COURT, KATTAPPANA.

EXHIBIT-P5: TRUE PHOTOSTAT COPY OF JOINT TRIAL APPLICATION AS I.A.NO.904/2014 IN O.S.NO.230/2011 ON THE FILES OF HONOURABLE SUB COURT, KATTAPPANA.

EXHIBIT-P6: TRUE PHOTOSTAT COPY OF OBJECTION IN I.A.NO.904/2014 IN O.S.NO.230/2011 ON THE FILES OF HONOURABLE SUB COURT, KATTAPPANA.

EXHIBIT-P7: CERTIFIED COPY OF THE ORDER DATED 28.10.2014 IN I.A.NO.904/2014 IN O.S.NO.230/2011 ON THE FILES OF HONOURABLE SUB COURT, KATTAPPANA.

RESPONDENT(S) ' EXHIBITS: NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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O.P(C).Nos.2778 and 2862 of 2014

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Dated this the 20th day of August, 2015

JUDGMENT

These original petitions arise from the applications for joint trial filed in O.S.No.111 of 2010 of the Sub Court, Kattappana as I.A.No.169 of 2014 and order dated 28.10.2014 in I.A.No.904 of 2014 in O.S.No.230 of 2011 of Sub Court, Kattappana.

2. When O.P.No.2862 of 2014 came up for hearing, it was submitted by both sides that the connected O.P.No.2778 of 2014 was also pending. By order dated 18.08.2015, both the original petitions were posted together. Though, O.P.No.2778 of 2014 was not specifically listed today, since service is complete and same counsel are appearing for the parties in both the cases, on consent, it was taken up and both OPs heard.

3. Examined the records.

4. In O.P.No.2862 of 2014, it was stated that O.S.No.111 of 2010 was filed by the petitioner herein seeking a decree for cancellation of power of attorney No.164/2007 executed by the defendant herein. O.S.No.30 of 2007 was filed before the Sub Court, Kattappana by the petitioner herein against the defendant in O.S.No.111 of 2010 as the 7th defendant and remaining other

persons as defendants 1, 2 and 8. That was a suit for specific performance of an agreement for sale.

5. O.P.No.2778 of 2014 arises from an order in O.S.No.230 of 2011. The plaint of that suit discloses that the suit was filed by the petitioner herein seeking cancellation of the documents allegedly executed by defendants 1 to 7 in favour of defendants 8 to 11. A perusal of the plaints in all the three suits indicate that some of the properties involved overlap and the power of attorney, which is the subject matter of O.S.No.111 of 2010, relates to a portion of the subject matter involved. In the interlocutory application leading to the impugned order in O.P.No.2862 of 2014, a request was made by the parties for joint trial of O.S.No.30 of 2007 with O.S.No.111 of 2010. On the other hand, in O.P.No.2778 of 2014, joint trial was sought for O.S.No.230 of 2011 with O.S.No.30 of 2007. In other words, in both the writ petitions, respective parties sought for joint trial of two suits each out of the three suits pending. Even though, all the defendants are not parties to two suits, except the third suit in O.S.No.230 of 2011, parties to two other suits are common.

6. In the above circumstance, it is evident that though all are not parties to all the three suits, there are some common parties and the issues involved are interlinked to each other. In the above

circumstance, the joint trial of all the three suits will avoid multiplicity of proceeding, which will be beneficial to the interest of the parties. The court below ought to have allowed the joint trial application in both the original petitions. Hence, impugned orders are not sustainable and are liable to be set aside.

In the result, original petitions are allowed. Impugned orders are set aside and I.A.No.169 of 2014 and I.A.No.904 of 2014 are allowed. It is ordered that there will be a joint trial of O.S.No.230 of 2011, O.S.No.30 of 2007 and O.S.No.111 of 2010 of the Sub Court, Kattappana. The Court shall list all the three cases together in accordance with law. Court below shall decide as to which among the three suits will be the leading suit, in which evidence to be recorded.

Sd/-

SUNIL THOMAS
Judge

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