

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 543 of 2005 (M)

PETITIONER(S) :

**AHAMMAD SHERIF, S/O.MALIYAKKAL BAVUTTY HAJI,
NAGARAM AMSOM AND DESOM, KOZHIKKODE TALUK.**

BY ADV. SRI.MOHAMMED NIAS.C.P.

RESPONDENT(S) :

- 1. ABDURAHIMAN ALIAS KAMMUKUTTY HASSAN,
MAKKITHANAKATH, S/O.MUHAMMADKUTTY, TANUR P.O.**
- 2. CHIMBALINTE PURAKKAL ASSAYINAR HAJI'S,
SON OF MUSTHAFA, CHIRAL KADAPPURAM, TANUR P.O.**
- 3. SEETHINTE PURAKKAL KASMI'S SONS MAJID,
CHIRAL KADAPPURAM, TANUR P.O.**
- 4. SEETHINTE PURAKKAL SAIDALIKUTTY'S
SON OF SAIDALAVI.**
- 5. SEETHINTEPURAKKAL KUNHIMUHAMMAD'S
SON KOYAMON.**
- 6. KUTTIKKADAN VEETIL AHAMMADKUTTY'S
SON KURIKKAL SAIDALI.**
- 7. KUTTIKKADAN VEETIL AHAMMADKUTTY'S
SON KUNHIKADAR.**
- 8. PONNSMBATH SAKEER AHAMMAD,
S/O.MUHAMMAD.**
- 9. SEETHINTEPURAKKAL KASMI,
S/O.MOIDEEN.**
- 10. VALIYKATH PUTHIYAMALIYAKKAL ALIAS
MADATHINKAL SAIDALAVI BIN MUHAMMED HYDROS
SAIDALI KOYA TANGAL, S/O.SAIDALAVI.**
- 11. CHITTAMBALAM IMBICHI MUHAMMED'S
SONS UNNIMOIDU.**

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12. KADAVANADI VALAPPIL K.V.MUHAMMED RAFI,
S/O.MOOSAN KUTTY HAJI, PUTHIYAPEEDIKAYIL.

13. MANOLA ABDUL BASHEER,
S/O.ABDULLA.

14. KUNNUVAYIL HAMZA,
S/O.ALI.

15. CHIMBALINTEPURAKKAL HAMZU'S
DAUGHTER JAMGIYA (MINOR).

16. RUBIYA, MINOR.

17. SAYANU, MINOR.

18. JAGILA, MINOR.

19. ASLUL BANNA, MINOR.

20. ATHRURASA, MINOR.

21. CHIMBALINTE PURAKKAL THAHIRA,
W/O.HAMZU.

15 TO 20 RESPONDENTS REPRESENTED BY MOTHER THAHIRA,
CHIMBALINTEPURAKKAL (R21).

22. KOMMATHIN PURAKKAL ADHAKRISHNAN'S
WIFE PREMA.

23. DAUGHTER MAYA, 12 YEARS (MINOR).

24. DAUGHTER MINU, 9 YEARS, (MINOR)

MINOR 23 AND 24 REPRESENTED BY MOTHER R22.
RESPONDENTS ARE RESIDE AT TANUR, TANUR P.O.

BY SRI.T.KRISHNAN UNNI (SENIOR ADVOCATE)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: COPY OF APPLICATION I.A.NO.1901 OF 2004 IN O.S.NO.29 OF 2000,
MUNSIFF COURT, PARPPANANGADI.**

EXHIBIT P2: COPY OF ORDER DATED 07.12.2004 IN DO.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.543 of 2005

Dated this the 15th day of October, 2015

JUDGMENT

The plaintiff in O.S.No.129/2000 on the file of the Munsiff's Court, Parappanangadi is the petitioner. The above suit was filed for a declaration that the plaintiff alone has title and possession over the plaint schedule property and to set aside or cancel the documents executed by the defendants which are non-est in the eye of law and also for consequential injunction. The plaintiff contended that the property is in the absolute ownership and possession of the plaintiff and that the defendants have no manner of right over the same and that during the pendency of the suit, portions of the plaint schedule property were assigned as per registered documents. The details of the assignment made and the extent of properties were clearly mentioned in I.A.No.1901/2004, an application for amending the plaint. The respondents filed

a counter stating that the amendment sought is belated and without *bona fides*. The petitioner alleges that the court below without properly considering the effect of the proposed amendment and its impact, dismissed the application by order dated 7.12.2004. It is with this background the petitioner has come up before this Court.

2. Arguments have been heard.

3. The petitioner, who is the master of the suit, by the amendment proposed, wanted to confine the relief sought for to the properties held by him at present as he had sold out certain properties after the filing of this writ petition. There cannot be any dispute to the proposition that the relief can be granted only in respect of the properties now held by him if he is entitled to succeed. No serious prejudice would be caused to the respondent on account of the amendment proposed. The reasoning pointed out by the learned Munisiff was that the amendment if allowed would protract the proceedings. However, unnecessarily, the matter has been delayed for a period of 10 years on account of the dismissal of the

application and this consequential writ petition. I do not see any justifiable reason to justify or not to sustain the impugned order.

Therefore, this writ petition is allowed. The order dated 7.12.2004 on I.A.No.1901/2004 in O.S.No.129/2000 on the file of the Munsiff's Court, Parappanangadi is set aside. The said I.A. shall stand allowed.

The parties shall mark their appearance before the Munsiff Court on 23.11.2015. The petitioner shall be permitted to carry out the amendment on the strength of this and after that the learned Munsiff shall offer both sides an opportunity to complete their pleadings and thereafter, the suit shall be proceeded with in accordance with law and final verdict shall be given within a period of six months from the date of appearance of the parties.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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true copy

P.S.TO JUDGE