

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

O.P(C).No. 2954 of 2014 (O)

(OS 172/2010 of ADDL. MUNSIFF'S COURT-I, NEYYATTINKARA)

PETITIONER/1ST PLAINTIFF:

ANTO MARCELINE AGED 52 YEARS,
S/O.LATE S MARCELINE, MALIYAKAL HOUSE, POOVAR PO
THIRUVANANTHAPURAM

BY ADVS.SRI.K.B.PRADEEP
SRI.ASHOK SURESH

RESPONDENTS:

1. S M TREASA
W/O.LATE S.MARCELINE, MALIYAKAL HOUSE
POOVAR PO, THIRUVANANTHAPURAM 695 001.
2. M.JOSE STANLEY,
S/O.S MARCELINE, VISAKH, TC 42/949-1
ASAN NAGAR, MUTTATHARA
(BEHIND SERVICE CO-OPERATIVE BANK) VALLAKADAVU PO
THIRUVANANTHAPURAM-08
3. T.M.HILDA
W/O.R.C.ROSWAN, E-14, BHATIA GARDEN(24)
55-MANAPAKAM ROAD,
(NEAR MIOT HOSPITAL)CHENNAI 600 116
4. T.M.VIMALA,
W/O.T.V.JOHN SUKHAR, 35/2085-A
PIPE LINE ROAD(CHURCH ROAD END), PALARIVATTOM PO
ERNAKULAM-25
5. T.M.VERGIN,
W/O.JOHNKUTTY, POST BOX NO.16701, AJMAN, UAE -16701
6. T.M.LISSY
W/O.WILLIAM SANJAY, 3-D2, STAR RETREAT LANE-34
JANATHA ROAD, VYTTILA, ERNAKULAM 682 019.
7. T.M.VIJAYA
W/O.BESLIN M.JOHN, NO.9/11 FOREST QUARTERS
SOCIAL FORESTRY COMPLEX, PTP AVENUE, VATTIYOORKAVU PO
THIRUVANANTHAPURAM 695 013.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16.7.2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P(C) .No.2954/2014 (O)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1 TRUE COPY OF THE PLAINT IN OS NO.172/2010

EXHIBIT P2 TRUE COPY OF THE WRITTEN STATEMENTS

EXHIBIT P3 TRUE COPY OF THE SAID APPLICATION DATED 4/11/2014

EXHIBIT P4 TRUE COPY OF THE ORDER DATED 20/11/2014

RESPONDENTS' EXHIBITS: Nil

//TRUE COPY//

PA TO JUDGE

PtK/

B. KEMAL PASHA, J.

.....
O.P.(C) No.2954 of 2014

.....
Dated this the 16th day of July, 2015

J U D G M E N T

Ext.P4 order passed by the court below in Ext.P3 IA is under challenge. Through Ext.P3 IA, the plaintiff in O.S.No.172/2010 of the court below wanted to withdraw from the suit under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 with leave to file a fresh suit. The court below has dismissed the IA on the ground that the suit does not suffer from any formal defect; whereas the defects pointed out by the petitioner through Ext.P3 could be cured merely through necessary amendments in the plaint. It is on that ground, the court below has dismissed the IA through Ext.P4 order.

2. Even though notice has been served on the respondents, there is no representation for the respondents. Heard the learned counsel for the petitioner.

3. The learned counsel for the petitioner has pointed out that the court below could have considered the grounds noted in Ext.P3 as sufficient grounds enabling the plaintiff to withdraw from the suit under Order XXIII Rule 1(3) of CPC. On a perusal of the records and on hearing the learned counsel for the petitioner, this Court is of the view that all the defects pointed out in Ext.P3 can still be cured through proper amendment to the suit.

This Original Petition is disposed of, by giving an opportunity to the petitioner to amend the plaint properly,.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge