

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

OP(C).No. 2999 of 2014 (O)

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(OS 208/2010 of SUB COURT,TRIVANDRUM)

PETITIONER:

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JAYASREE RAJENDRAN,  
D/O. LATE R. VIJAYALEKSHMI AMMA, T.C 25/1727,  
MANJALIKULAM CROSS ROAD, THAMPANOR.

BY ADVS.SMT.M.A.ZOHRA  
SRI.MAHESH ANANDAKUTTAN

RESPONDENTS:

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1. K.JAYAROOP  
S/O. LATE A. KRISHNAN NAIR, SOUMYA, T.C 15/1675(1)  
VAZHUTHACAD, THIRUVANANTHAPURAM - 695 010.
2. JAYACHANDRAN NAIR @ JOY  
S/O. LATE KRISHNAN NAIR, REMADEVI MANDIRAM  
VAZHUTHACAD, THYCAUD VILLAGE, THYCAUD P.O.  
THIRUVANANTHAPURAM - 695 010.
3. JAYACHITHRA @ AMBILI  
W/O. SARATHCHANDRA KUMAR, SOURABHYA, HOUSE NO.155/3  
FERRY ROAD, THOTTAKATTUKARA, ALUVA P.O.  
ERNAKULAM -683 101.

R1 BY ADV. SRI.S.V.RAJAN  
R1 BY ADV. SRI.R.SUDHISH  
R1 BY ADV. SMT.M.MANJU  
R1 BY ADV. SRI.C.P.JAGADEESH  
R1 BY ADV. SRI.R.SANTHOSH (VARKALA)  
R1 BY ADV. SRI.JACOB.T.KOSHY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-03-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 2999 of 2014 (O)  
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APPENDIX

PETITIONER'S EXHIBITS :  
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EXHIBIT-P1-TRUE COPY OF THE PLAINT IN O.S 208/2010 ON THE FILES OF  
THE SUB COURT, THIRUVANANTHAPURAM.

EXHIBIT-P2-TRUE COPY OF THE I.A 3202 OF 2013 ON 08/07/2013 IN  
O.S 208/2010.

EXHIBIT-P3-TRUE COPY OF THE I.A 3201/2013 DATED 02/07/2013 IN  
O.S 208/2010.

EXHIBIT-P4-TRUE COPY OF THE I.A 3563/2013 ON 07/08/2013 IN  
O.S 208/2010 WITHOUT EXT.A1.

EXHIBIT-P5-TRUE COPY OF THE B DIARY IN ORIGINAL SUITS.

EXHIBIT-P6-TRUE COPY OF THE ORDER DATED 28/10/2013 IN  
I.A 3563/2013 IN O.S 208/2010 OF THE IST ADDL SUB  
JUDGE, THIRUVANANTHAPURAM.

RESPONDENTS' EXHIBITS:  
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EXT. R1(a) COPY OF 2ND DEFENDANTS STATEMENT OF OBJECTION TO  
I.A.3201/2013 AND 3202/2013 IN O.S.208/2010 OF SUB  
COURT, THIRUVANANTHAPURAM. (WITHOUT EXHIBIT).

EXT. R1(b) COPY OF ORDER DTD.1/6/2011 OF HIGH COURT OF KERALA IN  
RP 316/2011 IN FAO 337/2010.

// True Copy //

P.A. To Judge.

smp

**P.BHAVADASAN, J.**

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**Original Petition (Civil) No.2999 OF 2014**  
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**Dated this the 26<sup>th</sup> day of March, 2015.**

**J U D G M E N T**

Under challenge is Ext.P6 order whereby the court below has allowed I.A.No.3563/2013 in O.S.No.208/2010 said to have been filed by the 1<sup>st</sup> respondent herein for impleading him as the sole legal representative of the deceased 1<sup>st</sup> defendant who died during the pendency of the suit.

2. The facts absolutely necessary for the purpose of disposal of the original petition are as follows:

The petitioner filed a suit for partition before the Sub Court, Thiruvananthapuram. The 1<sup>st</sup> defendant is the mother of the petitioner and defendants 2 to 4 are her siblings. During the pendency of the suit, 1<sup>st</sup> defendant died and it is claimed that the petitioner filed I.A.No.3201/2013 on 02.07.2013 seeking to carry out consequential amendments to plaint and also I.A.No.3202/2013 on 08.07.2013 seeking to have the plaintiff and defendants 2 to 4 recorded as the legal heirs of the

1<sup>st</sup> defendant. While those petitions were pending, it is alleged that the 1<sup>st</sup> respondent herein/2<sup>nd</sup> defendant in the suit filed I.A.No.3563/2013 to record him as the sole legal representative of the deceased 1<sup>st</sup> defendant to the exclusion of others. The complaint is that while the Interlocutory Applications filed by the petitioner were kept pending, I.A.No.3563/2013 was allowed rendering other applications infructuous. Copy of the B diary has been produced for perusal of this Court.

3. Learned counsel appearing for the respondents pointed out that a perusal of B diary clearly shows that in spite of direction of this Court to have the suit expeditiously disposed of, the petitioner was dragging on the matter under one pretext or another to ensure that no finality is reached in the suit. It is also pointed out that no counter affidavit was filed to I.A.No.3563/2013. It was under those circumstances that the petition had been allowed.

4. Whatever that be, it was not proper for the court below to have taken up I.A.No.3563/2013 and allowed the same while two other applications i.e. I.A.No.3201/2013 and

I.A.No.3202/2013 for the same purpose were pending consideration. It would have been only proper for the court below to take all the three applications and dispose of them on merits after hearing the parties, in accordance with law.

For the above reasons, Ext.P6 order is set aside and the court below is directed to consider I.A.Nos.3201, 3202 and 3563 of 2013 afresh and dispose them of in accordance with law, after hearing both parties, on or before 08.04.2015. Since there is already a direction by this Court to dispose of the suit as early as in 2011, every attempt shall be made by the court below to dispose of the suit as expeditiously as possible, at any rate, within a period of three months from the date of re-opening of the court after summer vacation.

This original petition is disposed of as above.

Sd/-

**P.BHAVADASAN  
JUDGE**

smp