**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE VIJU ABRAHAM**

**MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946**

**OP(C) NO. 378 OF 2024**

**AGAINST THE ORDER DATED 25.01.2024 IN I.A. NO.3/202 IN OS NO.670 OF 2018 OF ADDITIONAL MUNSIFF COURT,KOCHI**

**PETITIONER/RESPONDENT/PLAINTIFF:**

**P. V. HENRY**
**AGED 57 YEARS**
**PATHAPPILLY HOUSE, VENNALA P.O., EDAPPALLY SOUTH VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT, PIN - 682028**

**BY ADVS.**
**K.M.SANAL**
**P.B.JEFIN**

**RESPONDENT/PETITIONERS/DEFENDANTS:**

1 **M.G. VIDHYADHARAN**
**MAKKAYIL HOUSE, VENNALA KARA, VENNALA P.O., EDAPPALLY SOUTH VILLAGE, ERNAKULAM DISTRICT, PIN - 682028**

2 **VIJAYAKUMAR**
**MAKKAYIL HOUSE, VENNALA KARA, VENNALA P.O., EDAPPALLY SOUGHT VILLAGE, ERNAKULAM DISTRICT, PIN - 682028**

3 **PREMJI**
**MAKKAYIL HOUSE, VENNALA KARA, VENNALA P.O., EDAPPALLY SOUGHT VILLAGE, ERNAKULAM DISTRICT, PIN - 682028**

**4 SUSHAMA M.V.**
**W/O RAGHAVAN P. K., PANDARAPARAMBIL, KANJIRAMATOM,**
**PIN - 682315**

**BY ADVS.**
**K.PAUL KURIAKOSE**
**K.HABEEBULLA(K/1102/1993)**
**K.A.ANISH(K/741/2007)**
**ELDO KURIAKOSE(K/1074/1993)**
**ZACHARIAH GEORGE.K.(K/001886/2023)**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**VIJU ABRAHAM, J.**

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**O.P.(C) No.378 of 2024**

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Dated this the 5th day of August, 2024

**JUDGMENT**

The petitioner has approached this Court challenging Ext.P10 order dated 25.01.2024 in I.A.No.3/2020 in O.S.No.670/2018 of the Munsiff's Court, Ernakulam, whereby Ext.P8 counter claim filed was accepted.

2. The specific contention of the petitioner is that though in the counter claim statement it is stated that the respondents came to know about the encroachment during January 2019, in the written statement filed on 25.03.2019 the said aspect is not seen reflected. Therefore, it is contended that there is no *bonafides* in filing the claim petition at this belated stage.

3. The learned counsel for the respondents submits that in paragraph 20 of Ext.P6 written statement, it has an answer to the averments in the plaint. Thereafter in March 2020, the petitioner has raised a counter claim and filed a petition to grant leave to file additional pleadings by way of counter claim, which has been allowed as per Ext.P10 order.

After hearing both sides, I am of the view that there is no

jurisdictional error on the part of the learned Munsiff in allowing I.A.No.3/2020 permitting the respondents to file additional pleadings in O.S.No. 670/2018 by way of a counter claim. In view of the above, I find no reason to interfere with Ext.P10 and the original petition is accordingly, dismissed. The contentions raised by the petitioner are all matter of evidence, which could be raised at the time of trial.

Sd/-
**VIJU ABRAHAM**
**JUDGE**

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**APPENDIX OF OP(C) 378/2024**

**PETITIONER EXHIBITS**

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| **Exhibit P1** | **TRUE COPY OF THE PLAINT IN OS. NO. 670/2018** |
| **Exhibit P2** | **TRUE COPY OF THE INJUNCTION APPLICATION IA. NO. 4134/2018** |
| **Exhibit P3** | **TRUE COPY OF THE ORDER IN IA. NO. 4134/2018 PASSED BY THE HON’BLE MUNSIFF’S COURT** |
| **Exhibit P4** | **TRUE COPY OF THE COMMISSION REPORT ALONG WITH THE ROUGH SKETCH FILED BY THE ADVOCATE COMMISSIONER DATED 18/07/2018** |
| **Exhibit P5** | **TRUE COPY OF THE COUNTER AFFIDAVIT TO IA. NO. 4134/2018 DATED 23/10/2018** |
| **Exhibit P6** | **TRUE COPY OF THE WRITTEN STATEMENT DATED 25/03/2019 FILED BY THE RESPONDENT** |
| **Exhibit P7** | **TRUE COPY OF THE PETITION IA. NO. 3/2020** |
| **Exhibit P8** | **TRUE COPY OF THE COUNTER CLAIM DATED 03/03/2020** |
| **Exhibit P9** | **TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER TO THE IA. NO. 3/2020** |
| **Exhibit P10** | **TRUE COPY OF THE ORDER IN IA. 3/2020 DATED 25/01/2024** |