

Jolly P.K vs Asumma

Jolly P.K vs Asumma

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Court : Kerala Orders

Decided On : Jan-28-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/437/2018

Appellant : Jolly P.K

Respondent : Asumma

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 28TH DAY OF JANUARY 2022 / 8TH MAGHA, 1943
OP(C) NO. 3545 OF 2017 AGAINST THE ORDER IN OS 565/2013 OF I
ADDITIONAL MUNSIFF COURT, ERNAKULAM PETITIONERS: 1
MICHAEL CHANDY, AGED 51 YEARS S/O. CHANDY,
MANJAKUNNEL, IRINJALAKUDA P.O., IRINJALAKUDA DESOM AND
VILLAGE, MUKUNDAPURAM TALUK, THRISSUR - 680 121. 2 ANNA
AGED 46 YEARS W/O. MICHAEL CHANDY, MANJAKUNNEL,
IRINJALAKUDA P.O., IRINJALAKUDA DESOM AND VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR - 680 121. BY ADVS.
SRI. JOHNSON MANAYANI SRI. JEEVAN MATHEW MANAYANI

RESPONDENTS:

1 ASSUMMA AGED 71 YEARS W/O. LATE KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOOR DESOM, MARADU VILLAGE, KANAYANNUR TALUK, NOW RESIDING AT THEKKAMACHUNGAL HOUSE, CHEMBU DESOM, CHEMBU P.O., CHEMBU VILLAGE, VAIKOM TALUK, KOTTAYAM - 686 608. 2 KUNJU BEEPATHU AGED 65 YEARS W/O. LATE KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOOR DESOM, MARADU VILLAGE, KANAYANNUR TALUK, NOW RESIDING AT KANDOTH HOUSE, KALOOR DESOM, KALOOR P.O., ELAMKULAM VILLAGE, KANAYANNOOR TALUK, ERNAKULAM - 682 017. 3 JAMEELA AGED 58 YEARS W/O. LATE KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOOR DESOM, MARADU VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT - 682 040.

4 AJEEB AGED 28 YEARS S/O. LATE KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOOR DESOM, MARADU VILLAGE, KANAYANNUR TALUK, ERNAKULAM DIST.- 682 040. 5 RAZIA AGED 24 YEARS D/O. LATE KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOOR DESOM, MARADU VILLAGE, KANAYANNUR TALUK, ERNAKULAM DIST. - 682 040. 6 ABDUL JALEEL AGED 42 YEARS S/O. LATE KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOOR DESOM, MARADU VILLAGE, KANAYANNUR TALUK, ERNAKULAM DIST. - 682 040. NOW RESIDING AT VELLAPPILLY HOUSE, VADAVATHOOR DESOM, VADAVATHOOR P.O., VIJAYAPURAM VILLAGE, KOTTAYAM - 686 010. 7 ABDUL RAHIM AGED 39, S/O. LATE KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOOR DESOM, MARADU VILLAGE, KANAYANNUR TALUK, NOW RESIDING AT KANDOTH HOUSE, EDAVANAKKADU DESOM, EDAVANAKKADU P.O., EDAVANAKKADU VILLAGE, KOCHI, ERNAKULAM DIST. - 682 502. 8 AGASTHA MATHEW AGED 43 YEARS W/O. MATHEW GEORGE, KARUKAYIL HOUSE, NETTOOR DESOM, MARADU VILLAGE, NETTOOR P.O., KANAYANNOOR TALUK, ERNAKULAM -

682 040. 9 MUHAMMADALI AGED 42, S/O. KAMALUDDEEN, VAYALKULAM HOUSE, NENMENI P.O., NENMENI DESOM, KOLLAMKODE VILLAGE, CHITTOOR TALUK, PALAKKAD DIST. - 678 506. 10 SHANAVAS AGED 42 YEARS S/O. MUHAMMED ABDUL PARRY, K.M. MANSIL, ANANTHANKODE KULAM, THATTAMANGALAM P.O., PATTAMCHERY VILLAGE, CHITTOOR TALUK, PALAKKAD - 678 102.

*11 POORNIMA (DELETED)

AGED 57 YEARS W/O. VEERENDRADY, 31/486, THAMMANAM P.O., THAMMANAM DESOM, POONUTHURA VILLAGE, KANAYANNOOR TALUK, ERNAKULAM - 682 032. (RESPONDENT 11 IS DELETED FROM PARTY ARRAY VIDE ORDERS DATED 07-12-2021 IN IA NO. 1/2020) 12 BIBU JOB AGED 40 YEARS MARANGOLIL HOUSE, KADAVANTHARA P.O., KADAVANTHARA DESOM, ELAMKULAM VILLAGE, KANAYANNOOR TALUK, ERNAKULAM - 682 020. 13 JOJI AGED 43, S/O. KUNJAPPAN, PULIKKAPPARAMBIL HOUSE, ERAMALLOOR DESOM, EZHUPUNNA VILLAGE, ERAMALLOOR P.O., CHERTHALA TALUK, ALAPPUZHA - 688 537. 14 SINDHU AGED 37, W/O. JOJI, PULIKKAPPARAMBIL HOUSE, ERAMALLOOR DESOM, EZHUPUNNA VILLAGE, ERAMALLOOR P.O., CHERTHALA TALUK, ALAPPUZHA - 688 537. BY ADVS. SRI.M.S.UNNIKRISHNAN FOR R1 & R2 SRI.JITHIN PAUL VARGHESE FOR R1 & R2 SRI.T.K.RADHAKRISHNAN FOR R3, R4, R5, R9, R10 SMT.K.L.SREEDEVI FOR R3, R4, R5, R9, R10 SMT.CHITHRA R.SHENOY FOR R3, R4, R5, R9, R10 SRI.T.R.HARI KRISHNAN FOR R3, R4, R5, R9, R10 SMT.K.S.SUDHA FOR R3, R4, R5, R9, R10 SRI.SAKIR.K.H. FOR R6 & R7 SRI.DINESH R.SHENOY FOR R13 & R14 SRI.EBIN MATHEW FOR R13 & R14 KUM.T.S.SAUMYA FOR R13 & R14

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28.01.2022, ALONG WITH OP(C).437/2018, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
FRIDAY, THE 28TH DAY OF JANUARY 2022 / 8TH MAGHA, 1943
OP(C) NO. 437 OF 2018 AGAINST THE ORDER/JUDGMENT DATED
27.01.2018 IN I.A.113/2018 IN OS 565/2013 OF I ADDITIONAL
MUNSIFF COURT,ERNAKULAM PETITIONERS/DEFENDANTS 13
AND 14:

1 JOLLY P.K AGED 46 YEARS, S/O KUNJAPPAN, NEDUNGATTU
HOUSE, PULIKKAPARAMBIL, KOCHUVELI KAVALA,ERAMALLOOR
DESOM, EZHUPANNA VILLAGE, ERAMALLOOR PO, CHERTHALA
TALUK, ALAPPUZHA DISTRICT, PIN.688537. 2 SINDHU AGED 41
YEARS, W/O JOJI, PULIKKAPARAMBIL HOUSE, ERAMALLOR
DESOM, EZHUPUNNA VILLAGE, ERAMALLOR PO, CHERTHALA
TALUK, ALAPPUZHA DISTRICT. PIN.688537. BY ADVS. SRI.DINESH
R.SHENOY SRI.EBIN MATHEW KUM.T.S.SAUMYA SRI.V.SUBHASH
BHAT

RESPONDENTS/PLAINTIFFS: 1 ASUMMA W/O LATE.
KUNJUMUHAMMED, MALIYEKKAL HOUSE, NETTOR DESOM,
MARADU VILLAGE, KANAYANNUR TALUK, NOW RESIDING AT
THEKKAMACHUNGAL HOUSE, CHEMBU DESOM,CHEMBU PO,
CHEMBU VILLAGE, VAIKOM TALUK, PIN.686608. 2 KUNJU
BEEPATHU W/O LATE. KUNJUMUHAMMED,NETTOR DESOM,
MARADU VILLAGE, KANAYANNUR TALUK, NOW RESIDING AT
KANDOTH HOUSE, KALoor DESOM, KALoor PO, ELAMKULAM
VILLAGE, KANAYANNUR TALUK, PIN.682017. BY ADVS.
SMT.M.ARDRA KRISHNAN FOR R1 AND R2 SRI.JITHIN PAUL
VARGHESE FOR R1 AND R2 SMT.A.G.NISHA FOR R1 AND R2
SRI.K.SUNIL FOR R1 AND R2 SRI.M.S.UNNIKRISHNAN FOR R1 AND
R2 SMT.C.V.VEENA FOR R1 AND R2 THIS OP (CIVIL) HAVING COME
UP FOR ADMISSION ON 28.01.2022, ALONG WITH OP(C).3545/2017,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

O.P.(C) No.3545/2017 is an Original Petition filed under Article 227 of the Constitution of India by additional defendants 10 and 11 subsequently impleaded in O.S. No.565/2013 pending before the Additional Munsiff Court, Ernakulam.

2. O.P.(C) No.437/2018 is at the instance of the additional defendants 13 and 14 in the same Suit.

3. All the petitioners are aggrieved in

the matter of impleadment ordered by the court below. The contention raised by the petitioners is that they are not necessary parties to decide the dispute, particularly in view of the fact that no allegations levelled against them in the plaint or no relief sought for against them.

4. The learned counsel for the petitioners reiterated the contention.

5. However, it is pointed out by the

learned counsel for the respondents/the plaintiffs, that the petitioners herein got impleaded in the suit, which has been filed for partition of the plaint schedule property and the petitioners are purchasers of part of property, forming part of the plaint schedule item. It is submitted further that after impleadment of the petitioners, the plaint was sought to be amended by incorporating the grievance against the petitioners as well as by incorporating relief against them. Therefore the impleadment allowed by the court below is liable to be confirmed.

6. In O.P.No.437/2018, it is submitted by

the learned counsel for the petitioners that though I.A.No.7179/2014 was filed to implead defendants 13 and 14, subsequently the plaintiffs not pressed the I.A. as on 07.06.2016. But ignoring this fact, the learned Munsiff passed the impugned order. In

order to address this argument, I have

perused, the B Diary proceedings produced before this Court, which is available in page nos.44 and 45. It would appear that on 10.06.2015, I.A. No.7179/2014 was allowed, whereby supplemental defendants 13 and 14 got impleaded. The further order was to carry out the amendment within three days and issue summons to D13, D14, D9 and D12. It was after about one year, the plaintiffs not pressed the I.A. In fact such a course of action is not permissible in law and the course of action of the plaintiffs, if the plaintiffs are aggrieved in the matter of allowing the petition is, either to file another petition to delete the so called defendants from the

party array or to challenge the said order

before the higher courts. Therefore, 'not pressing' of I.A. No.7179/2014 on 07.06.2016 has no legal effect in view of the order dated 10.06.2015, when the same was allowed about one year before. Thus this contention raised by the learned counsel for the petitioners in O.P.No.437/2018 is found to be merit less.

7. According to the learned counsel for

the petitioners herein, the court below impleaded additional defendants 13 and 14, without issuing notice to the other side, though the usual procedure adopted when an impleading petition is moved, is to issue notice to the proposed parties and after hearing them the petition would be considered on merits. However, if an impleadment is carried out even without notice, then it is open to the parties to challenge the impleadment highlighting that they were not necessary parties in the suit and the impleadment is wrong.

8. Factually, by filing petition which

led to impugned order, the petitioners herein sought for the said relief, the learned Munsiff disallowed the same. Here the status of the petitioners, no doubt, as that of subsequent purchasers from sharers of the undivided property and the same aspect is not a matter in dispute. Defendants 10 and 11 would contend that they are bonafide purchasers. It is the trite law that if a person purchases an undivided

share in a joint property, the transferee would get right only in respect of the share entitled by the transferee and nothing more. If anything more what has been entitled, if transferred from the joint property, the transfer to that extent has no legal effect. As of now, the plaintiffs incorporated amendment in the plaint and necessary prayers sought against the petitioners herein also. Thus, the petitioners herein are necessary parties in the suit and their plea to delete them from the party array cannot be allowed. Therefore, no interference is called for in relation to the impugned orders. Accordingly, O.P (C) Nos.3545/2017 and Sd/- A.BADHARUDEEN, JUDGE. ww APPENDIX OF OP(C) 3545/2017 PETITIONERS' EXHIBITS: EXHIBIT P1 THE TRUE COPY OF THE PLAINT IN O.S.NO. COURT, ERNAKULAM. EXHIBIT P2 THE TRUE COPY OF THE IMPLEADING

PETITION WITH THE APPLICATION FILED BY THE PLAINTIFFS IN O.S.NO.565/2013 OF THE 1ST ADDL.MUNSIFF'S COURT, ERNAKULAM.

EXHIBIT P3 THE TRUE COPY OF THE PETITIONERS

ADDL.MUNSIFF'S COURT, ERNAKULAM. EXHIBIT P4 THE TRUE COPY OF THE ORDER IN O.S.NO.565/2013 DATED 10.01.2017 OF THE 1ST ADDL.MUNSIFF'S COURT, ERNAKULAM. EXHIBIT P5 THE TRUE COPY OF THE JUDGMENT IN O.P.

(C) 880/2017, DATED 03.04.2017 OF THIS HON'BLE COURT.

EXHIBIT P6 THE TRUE COPY OF THE PROOF AFFIDAVIT

ADDL.MUNSIFF'S COURT, ERNAKULAM.

EXHIBIT P6(A) THE TRUE COPY OF THE PROOF AFFIDAVIT

ADDL.MUNSIFF'S COURT, ERNAKULAM. EXHIBIT P7 THE TRUE COPY OF THE PETITIONERS AFFIDAVIT AND I.A.NO. 5278/2017, DATED 04.08.2017 IN O.S.NO.565/2013, FILED BY THE PETITIONERS TO REMOVE THE PETITIONERS FROM THE PARTY ARRAY.

EXHIBIT P8 THE TRUE COPY OF THE JUDGMENT IN OP(C) 09.08.2017. EXHIBIT P9 THE TRUE COPY OF THE ORDER IN I.A.NO. 30.08.2017 OF THE COURT OF THE 1ST ADDL.MUNSIFF'S COURT, ERNAKULAM. APPENDIX OF OP(C) 437/2018 PETITIONERS' EXHIBITS: EXHIBIT P1 TRUE PHOTOCOPY OF THE PLAINT AS ORIGINALLY FILED ON 17.6.2013 IN O.S NO.565/2013, 1ST ADDL. MUNSIFF COURT, ERNAKULAM. EXHIBIT P2 TRUE PHOTOCOPY OF I.A NO.7179/2014 IN O.S NO.565/2013 MUNSIFF COURT, ERNAKULAM. EXHIBIT P3 TRUE PHOTOCOPY OF THE MEMO SUBMITTED BY THE M.S UNNIKRISHNAN, COUNSEL FOR PLAINTIFFS IN O.S NO.565/2013, ADDL.MUNSIFF COURT, ERNAKULAM. EXHIBIT P4 TRUE PHOTOCOPY OF THE IA NO.113/2018 IN O.S NO.565/2013, MUNSIFF COURT, ERNAKULAM. EXHIBIT P5 TRUE PHOTOCOPY OF AMENDED PLAINT FILED ON 15.11.2017 IN OS NO.565/2013 MUNSIFF COURT, ERNAKULAM. EXHIBIT P6 TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT DATED 16.1.2018 FILED IN I.A NO.113/2018 IN O.S NO.565/2013, MUNSIFF COURT, ERNAKULAM. EXHIBIT P7 TRUE PHOTOCOPY OF THE ORDER DATED 27.1.2018 IN I.A 113/2018 IN O.S 565 NO.2013, 1ST ADDL.MUNSIFF COURT, ERNAKULAM. EXHIBIT P8 TRUE TYPED COPY OF B DIARY PROCEEDINGS IN O.S NO.565/2013, 1ST ADDL. MUNSIFF COURT, ERNAKULAM.

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