

K.Sugathan Vs. N.Sreenivasan

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SooperKanoon Citation : sooperkanoon.com/3413

Court : Kerala

Decided On : Nov-26-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : K.Sugathan

Respondent : N.Sreenivasan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 26TH DAY OF NOVEMBER 2014 5TH AGRAHAYANA, 1936 OP(C).No. 4265 of 2013 (O) ----- (OS712004 of PRINCIPAL SUB COURT, ATTINGAL) PETITIONERS/PETITIONERS: ----- 1. K.SUGATHAN HOUSE NO.22, A.K.G.NAGAR, AVANAVANCHERRY VILLAGE THIRUVANANTHAPURAM DIST.

2. N.HARIHARAN GOURI, KAYIKKARA, VAKKOM VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308.

3. CHANDRALALU VENMANAKKAL VEEDU, VAKKOM VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308. BY ADVS.SRI.M.R.RAJESH SMT.E.S.SANDHYA RESPONDENTS/PLAINTIFFS 1 AND 2 DEFENDANTS 1 TO 17 AND PETITIONERS 3 AND 5 IN I.A. 74/2005:

----- 1. N.SREENIVASAN, AGED 68 YEARS S/O.NEELAKANTAN,

RETIRED GOVT.SERVANT RESIDING AT SREEVAS AT VAKKOM DESOM, VAKKOM VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308.

2. G.SASEENDRAN, AGED55YEARS S/O.GOVINDAN, AGRICULTURIST, KANNACHIRA THODIYIL VEEDU VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308.

3. DEITY INSTALLED IN VAKKOM PUTHEN MUKKALUVATTOM BHAGAVATHY TEMPLE, REPRESENTED BY ADV.G.SUSEELAN, ADVOCATE COMPLEX, OPPO.SUB TREASURY, ATTINGAL THE RECEIVER APPOINTED BY THE SUB COURT ATTINGAL IN OS712004, 695 101. OP(C).No. 4265 of 2013 (O) 4. R.PRIYADARSI, AGED48YEARS S/O.RAGHAVAN, ADVOCATE, MANEESHA MELARKAZHIKOM, VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308.

5. A.K.SAJEEV, AGED32YEARS S/O.KUNJAN, COMPANY EMPLOYEE, KIZHIKKANAM VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308.

6. G.MANILKUMAR, AGED38YEARS S/O.GURUDASAN, GOVT.SERVANT, ARCHANAN VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308. * 7. PRADEESH RAJ S/O.BABU RAJ RAJ BHAVAN, VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308. (REMOVED FROM PARTY ARRAY) 8. AJAYAGHOSH, AGED43YEARS S/O.MANIDAS, COMPANY EMPLOYEE, MELARKAZHIKOM VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308.

9. R.PRADEEP, AGED43YEARS S/O.RAGHAVAN, AGRICULTURIST, MELARKAZHIKOM VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308 10. VEERENDRA SINHAN, AGED44YEARS S/O.VAMADEVAN, AGRICULTURIST, KURANGICHIRA VAKKOM DESOM AND VILLAGE695308.

11. S.KOUSALYA, AGED72YEARS D/O.SEKHARAN, RETIRED GOVT.SERVANT RESIDING AT PANIKKAKUDI, VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308.

12. S.PRASAD, AGED42YEARS S/O.SUNDARAN, GOVT.SERVANT RESIDING AT MEDAYIL PADINJARE VEEDU VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308

13. PURUSHOTHAMAN S/O.VASU, MEDAYIL PADINJARE VEEDU VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308 OP(C).No. 4265 of 2013 (O)

14. SUGUNAN, AGED48YEARS S/O.VELAYUDHAN, AGRICULTURIST, CHENGANAKKAL VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308

15. KRISHNAKUMAR, AGED29YEARS S/O.BABURAJ, STUDENT, RESIDING AT BCB MANDIRAM VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308

16. RAVEENDRAN S/O.PADMANABHAN, OORUKONATHU VEEDU, CHERUKASAM PULLAYIL, KODUVAZHANOOR VILLAGE THIRUVANANTHAPURAM DISTRICT695308.

17. SATHYADAS S/O.NARAYANAN, VIJAYALAYAM, MANICKAL MURI NELLANADU VILLAGE, THIRUVNANTHAPURAM DISTRICT695308

18. MOHANKUMAR S/O.GOPALAN, DWARAKA, MARKET ROAD ATTINGAL, THIRUVANANTHAPURAM DISTRICT, PIN695101.

19. PUSHPARAJAN S/O.NARAYAN, RAMANEEYAM, KUNJALUM VILAKOM VAKKOM VILLAGE, THIRUVANANTHAPURAM DISTRICT PIN695308.

20. SATHYAN.P KATTAKKALIL VEEDU, KILIMANOOR THIRUVANANTHAPURAM DISTRICT, PIN695101. *

21. S.JAYARAJ SAMBU NIVAS, VAKKOM DESOM AND VILLAGE THIRUVANANTHAPURAM DISTRICT, PIN695308 (REMOVED) (RESPONDENTS7AND21ARE REMOVED FROM THE PARTY ARRAY AT THE RISK OF the PETITIONER AS PER

ORDER

DATED2611.2014 IN O.P.(C)) R5 & 6, R8 - R15BY ADV. SRI.R.ANILKUMAR R1 & R2 BY ADV. SRI.G.P.SHINOD THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON2611-2014, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING: OP(C).No. 4265 of 2013 (O) ----- APPENDIX
PETITIONER(S)' EXHIBITS : ----- EXHIBIT P1 COPY OF THE
PLAINT IN OS712004 ON THE FILE OF THE SUB COURT ATTINGAL. EXHIBIT
P2 COPY OF THE IA NO.74/2005 IN OS NO.71/2004 ON THE FILE OF THE SUB
COURT, ATTINGAL. EXHIBIT P3 COPY OF THE OBJECTION FILED THE 6^H
DEFENDANT(8TH RESPONDENT HEREIN) TO EXT.P2. EXHIBIT P4 COPY OF
THE OBJECTION FILED BY THE DEFENDANTS 12 AND 13 (RESPONDENT 12 &
14 HEREIN) TO EXT.P2. EXHIBIT P5 COPY OF THE

ORDER

DATED 11/10/2013 IN EXT.P2 PETITION. EXHIBIT P6 COPY OF THE IA
NO.2616/2011 DATED 7/12/2013 IN OS712004 OF SUB COURT ATTINGAL.
RESPONDENT(S)' EXHIBITS: ----- EXT. R14(a) COPY OF

JUDGMENT

IN O.P.(C) 1644/13 (O) DTD. 11.7.13. // True Copy // P.A. To Judge. smp
P.BHAVADASAN, J.

----- Original Petition (Civil) No.4265
OF 2013----- Dated this the 26th day of
November, 2014.

JUDGMENT

Strange are the ways of court in dealing with interlocutory applications and this is a
case of typical nature.

2. The suit related to the framing up of a scheme for the Management of the
Vakkom Puthen Mukkaluvattom Bhagavathy Temple and for the removal of the
defendants 2 and 3 as trustees and office bearers of the temple.

3. After obtaining leave, suit was filed as per the provisions of Section 92 of the
Code of Civil Procedure and publication under Order 1 Rule 8(2) CPC was also
made. Soon thereafter, the petitioners along with respondents 20 and 21 came up
with an application as I.A.No.74/2005 to implead them as additional plaintiffs.
Copy of the said petition is produced as Ext.P2. That remained on file without

being taken up and orders being passed on the same. In the meanwhile, it so happened that leave granted was revoked and that lead the parties to approach this O.P.(C) No.4265/2013 2 Court by filing R.F.A.No.4/2011. This Court allowed the appeal and left open the contention regarding Section 92 CPC. Thereafter the petitioners changed their counsel and they pressed for hearing of Ext.P2. It was then that the objection was filed by the 6th defendant, copy of which is produced as Ext.P3. On Ext.P2, the impugned order (Ext.P5) has been passed.

4. Learned counsel appearing for the petitioners points out that by no stretch of imagination, either on facts or in law, the order can be sustained. The petitioners have filed the application to get themselves impleaded in the suit as early as in 2005 and the mere fact that orders are not passed on the petition, the petitioners cannot be found fault with. The other objection that petitioners 3 and 5 were not available is not a ground to reject the petition as far as the petitioners 1, 2 and 4 are concerned. It so happened that during the pendency of the petition, the 3rd petitioner left for heavenly abode and the 5th petitioner left for job abroad. These are not sufficient grounds to decline the prayer and the court below has erred in its order. O.P.(C) No.4265/2013 3 5. Sri.R.Anil Kumar, learned counsel appearing for the contesting respondents pointed out that it is only a tactic adopted by the petitioners to prolong the suit and that may not be permitted.

6. One shall not forget that in a scheme suit under Section 92 CPC, Order 1 Rule 8 (2) publication having been carried out. Any person who claims to be interested in the Trust can come forward with a prayer to implead him in the suit. The original plaintiff is not keeping good health and that prompted the petitioners to file I.A.No.74/2005. There is nothing to indicate that the petitioners were not agile in prosecuting the petition. There is no observation by the court below that when the matter was taken up, on any occasion, the petitioners were absent. The mere fact that the petition remained pending till it was taken up for orders culminating in Ext.P5, it could not be said that it was due to the fault of the petitioners. The absence of petitioners 3 and 5 was properly explained and one fails to understand how their absence will be a reason to reject the application. At any rate, the 5th petitioner had not disowned the petition. The court O.P.(C) No.4265/2013 4 below has therefore clearly erred in dismissing I.A.No.74/2005. This Original Petition is

allowed and the impugned order is set aside and the same stands allowed and the consequent amendment will be carried out. Since the suit is of the year 2005, the trial court shall take every endeavour to dispose of the suit as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. Sd/- P.BHAVADASAN JUDGE smp

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