

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

**PRESENT :**

**THE HONOURABLE MR. JUSTICE P.Q.BARKATH ALI**

**WEDNESDAY, THE 30TH SEPTEMBER 2009 / 8TH ASWINA 1931**

**WP(C).No. 29097 of 2008(L)**  
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**AGAINST THE ORDER DATED IN IA.921/2008 IN  
OS.468/2005 of ADDL.MUNSIFF COURT,KOCHI**  
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**PETITIONER(S):**  
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**MANOJ KUMAR, S/O.RAMAN, AGED 41 YEARS,  
RESIDING AT ANARIKATT, RAMESWARAM VILLAGE,  
KOCHI TALUK.**

**BY ADV. SMT.B.V.ROSHINI  
SMT.K.T.LILLY @ LILLY JAMES**

**RESPONDENT(S):**  
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- 1. DR.MALLINATHAN,  
S/O.KERALAVARMA THAMPURAN, RESIDING AT  
KOOTTUNKAL KOVILAKAM, KOKKOTHUMANGALAM,  
CHERTHALA (DIED).**
- 2. XAVIER, CONTRACTOR, AGED 57 YEARS,  
CHAKKALAKAL HOUSE, NEAR DLB QUARTERS,  
RAMESWARAM VILLAGE, KOCHI TALUK.**
- 3. KAMALADEVI, S/O.DR.MALLINATHAN, RESIDING  
AT KOOTTUNKAL KOVILAKAM, KOKKOTHAMANGALAM,  
CHERTHALA.**
- 4. MAYA VARMA, D/O.DR.MALLINATHAN,  
RESIDING AT KOOTTUNKAL KOVILAKAM,  
KOKKOTHAMANGALAM, CHERTHALA.**
- 5. MANU VARMA, S/O.DR.MALLINATHAN,  
RESIDING AT KOOTTUNKAL KOVILAKAM,  
KOKKOTHAMANGALAM, CHERTHALA.**

**ADV. SRLJOSE TOM C. KANDATHIL FOR R3,4,5**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 30/09/2009, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS**

<b>EXT.P1</b>	<b>TRUE COPY OF THE ORDER IN I.A.NO.2194/2005</b>
<b>EXT.P2</b>	<b>TRUE COPY OF THE INTERIM COMMISSION REPORT</b>
<b>EXT.P3</b>	<b>TRUE COPY OF THE ORDER IN I.A.NO.921/2008</b>

***/True Copy/***

**P.Q.BARKATH ALI, J.**

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**W.P.(C).No.29097 OF 2008**  
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Dated this the 30<sup>th</sup> day of September , 2009

**JUDGMENT**

This writ petition is remaining defective for want of service of notice to respondents 1 and 2. Respondents 3 to 5 are represented by counsel. Notice against respondents 1 and 2 is dispensed with as on going through the writ petition, I feel that the same is not maintainable.

2. The writ petitioner is the plaintiff in O.S.No.468/2005 of Additional Munsiff Court, Kochi. The suit was dismissed for default on May 28, 2008. The writ petitioner filed a petition for restoration of the suit which was also dismissed on July 24, 2008. Ext.P3 is the said order. Now the writ petitioner has challenged the said order in this writ petition.

Heard the counsel for respondents 3 to 5. Prima facie it appears that the writ petition is not maintainable. Writ petitioner should have filed appeal against Ext.P3 which he has not resorted to. Hence the writ petition is dismissed.

**P.Q.BARKATH ALI  
JUDGE**

SV.

