

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 31ST DAY OF JANUARY 2018 / 11TH MAGHA, 1939

OP(C) .No. 3316 of 2017

OS NO. 21/2009 OF MUNSIF COURT, PUNALUR

PETITIONERS/PETITIONERS/PLAINTIFFS :

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- 1 MOHAMMED KUNJU
S/O.ALI AKBAR KUNJU,
SHAHIDA MANZIL, VILAKUDY,
PATHANAPURAM TALUK, KOLLAM DISTRICT.
 - 2 SHAHIDA SHAMSHUDEEN
W/O.LATE SHAMSHUDEEN,
SHAHIDA MANZIL, VILAKUDY,
PATHANAPURAM TALUK, KOLLAM DISTRICT.
 - 3 HASHIM, AGED 17 YEARS, MINOR,
(REPRESENTED BY 2ND PETITIONER
MOTHER AND NEXT FRIEND)
S/O.LATE SHAMSHUDEEN,
SHAHIDA MANZIL, VILAKUDY,
PATHANAPURAM TALUK, KOLLAM DISTRICT.
 - 4 SHAHANA, AGED 17 YEARS, MINOR,
REPRESENTED BY 2ND PETITIONER
MOTHER AND NEXT FRIEND)
D/O.LATE SHAMSHUDEEN,
SHAHIDA MANZIL, VILAKUDY,
PATHANAPURAM TALUK, KOLLAM DISTRICT.
 - 5 SHEMEEM, AGE 12 YEARS, MINOR,
REPRESENTED BY 2ND PETITIONER
MOTHER AND NEXT FRIEND)
S/O.LATE SHAMSHUDEEN,
SHAHIDA MANZIL, VILAKUDY,
PATHANAPURAM TALUK, KOLLAM DISTRICT.
 - 6 AJITHKUMAR
S/O.VASU UNNITHAN,
VASAVA SADHANAM,
VILAKUDY, PATHANANPURAM TALUK,
KOLLAM DISTRICT.

BY ADV.SRI.R.RAJESH (PULLIKADA)

RESPONDENTS/RESPONDENTS/DEFENDANTS :

1. MANOJ, MANOJ BHAVAN, VILAKUDI VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT,
PIN: 691 508.
2. RADHAKRISHNAN, S/O.DAMODHARAN,
VADKKEPURAYIDATHIL VEEDU, VILAKUDY VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT
691 508.
3. SURENDRAN, S/O.KUNJU PANICKAR,
THADAVILA PUTHENVEEDU, VILAKUDY VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT
691 508.
4. SREEKALA, D/O.BABU
ONAMPALLIL PADINJATTATHIL,
VILAKUDI VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT 691 508.
5. OMANAKUTTAN, S/O.D/O.BABU
ONAMPALLIL PADINJATTATHIL,
VILAKUDI VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT 691 508.
6. JOY, S/O.ABUKARAN ACHAYAN,
SINDHU BHAVAN, KIZHAKETHIL,
VILAKUDI VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT 691 508.
7. N.MADHAVIKUTTY AMMA
W/O.LATE KARUNAKARAN PILLAI,
ARAPPURA VEEDU, VILAKUDI VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT 691 508.
8. GEE VARGHESE YOHANNAN
MYPOORAZHIKATHU VEEDU,
VILAKUDI VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT 691 508.
9. SHAHUL HAMEED
S/O.KUNJU MYDEEN KUNJU,
ALI AZHIKATHU VEEDU,
VILAKUDI VILLAGE, PATHAPURAM TALUK,
KOLLAM DISTRICT 691 508.
10. SOMAN, S/O.KESAVAN,
VADAKKEKKARA PUTHEN VEEDU,
VILAKUDI VILLAGE, PATHAPURAM TALUK,
KOLLAM DISTRICT 691 508.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-01-2018,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1 THE TRUE COPY OF THE PLAINT IN OS.21/09
EXHIBIT P2 TRUE COPY WRITTEN STATEMENT IN O.S 21/09
EXHIBIT *P3 TRUE COPY I.A 2118/17 IN OS.21/09 DATED 30/10/2017
FILED BY THE PETITIONERS. (REPLACE)

SUBSTITUTED WITH NEW DOCUMENT

EXHIBIT P3 COPY OF IA NO.2118/2017 IN OS NO. 21/09.

 *AS PER ORDER DATED 21/11/2017
 IN IA 2112/2017.

EXHIBIT P4 TRUE COPY OF ORDER OF THE MUNSIFF COURT
PUNALUR IN I.A 2118/17 IN OS.21/09

EXHIBIT P5 TRUE COPY OF ORDER OF THE MUNSIFF COURT
PUNALUR IN IA 2146/2017 IN OS.21/09

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

ALEXANDER THOMAS, J.

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O.P(C).No. 3316 of 2017

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Dated this the 31st day of January, 2018

J U D G M E N T

The prayers in this Original Petition (Civil) filed under the enabling provisions contained in Art.227 of the Constitution of India are as follows:

- “(i) *Set aside Exhibits P-4 dated 07.11.2017 in I.A.No. 2118/17 in O.S.No. 21/09 and to allow Exhibit P-3 amendment Application.*
- (ii) *Set aside Exhibit P-5 dated 07.11.2017 in I.A.No. 2146/ 2016 in O.S.No. 21/09 and grant sufficient time to the petitioners to carryout the amendments.”*

2. Heard Sri.R.Rajesh (Pullikada), learned counsel appearing for the petitioners/plaintiffs. Though notice has been duly served on the respondents, those parties have not entered appearance.

3. The order under challenge in this petition is one at Ext.P-4 dated 7.11.2017, whereby Ext.P-3 I.A.No.2118/2017 filed by the petitioners/plaintiffs for amendment of the plaint, has been rejected. Ext.P-4 order reads as follows:

“ORDER

Up on considering the proceedings of the case is is found that petitioner was given sufficient time for taking pre-trial steps. Even after availing all such opportunities, the petitioner has come up with the present application only on the final hearing of the case. The application is found to be highly belated and filed only to drag the litigation. Thus the application is dismissed without cost.”

4. Ext.P-3 I.A.No.2118/2017 in the O.S. is seen filed on 25.10.2017. It is brought to the notice of this Court that the suit was listed only on 3.11.2017 for trial. It has been held by the Apex Court in the decisions as in ***Vidyabai v. Padmalatha*** reported in 2009 2 SCC 409, para 11, ***Baldev Singh v. Manohar Singh*** reported in (2006) 6 SCC 498, para 17, etc. that the trial can be said to have commenced as envisaged in the proviso to Order VI

Rule 17 C.P.C. only after the commencement of evidence through filing of affidavit in lieu of chief examination of the witness, etc. Therefore, the materials on record disclose that the evidence in this case had not commenced at the time when Ext.P-3 was filed 25.10.2017. This factual aspect has not been controverted by the respondents as well. If that be so, the bar under the proviso to Order VI Rule 17 C.P.C. will not be attracted in the facts of this. This crucial relevant aspect has not been duly adverted to and considered by the trial court while rendering the impugned Ext.P-4 rejection order. That apart, even the merits of the matter relating to the amendment application have not even been adverted to and considered by the court below. In this view of the matter, the impugned Ext.P-4 order will stand set aside and Ext.P-3 I.A.No.2118/2017 in O.S.No. 21/2009 will stand restored to the file of the trial court concerned. The court below will ensure that orders are passed on Ext.P-3 afresh after hearing both sides and in the light of the observations of this Court in this judgment. Needful in this regard shall be done by the court below without much delay, at any rate, within a period of three weeks from the date of production of a certified copy of this judgment. The petitioners will produce a certified copy of this judgment before the court below for necessary information.

With these observations and directions, the Original Petition (Civil) stands finally disposed of.

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ALEXANDER THOMAS, JUDGE

///True Copy///

P.S. to Judge