



2025:KER:2136

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 14TH DAY OF JANUARY 2025 / 24TH POUSHA, 1946

OP(C) NO. 1279 OF 2022

(AGAINST THE ORDER DATED 24.05.2022 IN I.A.NO.13/2021
IN OS NO.30 OF 2020 OF MUNSIF'S COURT, KOYILANDY)

PETITIONER/2ND RESPONDENT IN I.A.13/2021/2ND DEFENDANT:

MUHAMMED, AGED 67 YEARS
S/O.KOYAKUTTY HAJI, THALAKKOTTU HOUSE,
PANNIKOTTUR AMSOM, PALANGAD DESOM,
THAMARASSERY TALUK, KOZHIKODE, PIN - 673572.

BY ADVS.R.PARTHASARATHY
SEEMA

RESPONDENTS/PETITIONER & RESPONDENT 1,3 TO 8/PLAINTIFF &
DEFENDANTS 1,3TO 8:

- 1 RAVEENDRAN NAIR,AGED 67 YEARS
S/O.KRISHNAN KUTTY NAIR, KOMATH HOUSE, UNNIKULAM,
UNNIKULAM VILLAGE, EKAROO DESOM,
THAMARASSERY TALUK, KOZHIKODE, PIN - 673574.
- 2 MUHAMMED ISMAYIL MAKKI, AGED 43 YEARS
S/O.MOIDEEN HAJI, ANAPARAKKAL HOUSE,
P.O.UNNIKULAM, UNNIKULAM VILLAGE,
KANTHAPURAM DESOM, THAMARASSERY TALUK,
KOZHIKODE, PIN - 673574.



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- 3 SUBAIDA, W/O.MUHAMMED, THALAKKOTTU HOUSE,
PANNIKOTTUR AMSOM, PALANGADU DESOM,
THAMARASSERY TALUK, KOZHIKODE, PIN - 673572.
- 4 SAHEER, S/O. MUHAMMED, THALAKKOTTU HOUSE,
PANNIKOTTUR AMSOM, PALANGADU DESOM,
THAMARASSERY TALUK, KOZHIKODE, PIN - 673572.
- 5 THOUSIF,S/O. MUHAMMED, THALAKKOTTU HOUSE,
PANNIKOTTUR AMSOM, PALANGADU DESOM,
THAMARASSERY TALUK, KOZHIKODE, PIN - 673572.
- 6 * KOYAKUTTY, THALAKKOTTU HOUSE, PANNIKOTTUR AMSOM,
PALANGADU DESOM, THAMARASSERY TALUK,
KOZHIKODE,PIN - 673572. (DELETED)
- 7 SURESH KUMAR,AGED 47 YEARS, S/O. KUTTIYAPPU,
KARTHIKA, KIZHAKKEKARATTIL PARAMBA, P.O.
CHEVARAMBALAM, CHEVAYUR AMSOM, DESOM, KOZHIKODE
TALUK, KOZHIKODE, PIN - 673017.
- 8 JAYAPRAKASH, AGED 47 YEARS,
S/O.KUTTIYAPPU, KARTHIKA, KIZHAKKEKARATTIL
PARAMBA, P.O. CHEVARAMBALAM, CHEVAYUR AMSOM,
DESOM, KOZHIKODE TALUK, KOZHIKODE, PIN - 673017.

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* (THE SIXTH RESPONDENT (R6) IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER DATED 25.11.2022 IN I.A.NO.1/2022)

R1 BY ADVS.K.P.SUDHEER
J.RAMKUMAR(K/376/2013)
R2 SUDHISH
M.MANJU(K/003562/1999)
R3 RAJESH V.NAIR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 14.01.2025, BV THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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"C.R."

JUDGMENT

The order directing the joint trial of three suits by the trial court is under challenge at the instance of the plaintiff in one of the suits, who is the defendant in another suit. The petitioner is defendant No.2 in O.S.No.30/2020 on the file of the Munsiff's Court, Koyilandy. Respondent No.1 is the plaintiff in the suit. The petitioner instituted O.S.No.143 of 2017 seeking an order of permanent injunction in respect of the plaint schedule property therein against respondent No.1. The petitioner claims that himself, his wife and children have right over the plaint schedule property. They traced their title through registered deed Nos.89/1991 and 2791/1985. Defendant No.1 in O.S.No.30/2020 filed another suit as O.S.No.147/2017 against respondent No.1. He also seeks a permanent prohibitory injunction against respondent No.1. It was when O.S.No.143/2017 was ripe for trial respondent No.1 instituted O.S.No.30/2020 to declare that he is the owner of the property to which the properties scheduled in



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O.S.Nos.143 and 147 of 2017 form part. Respondent No.1 thereafter filed I.A.No.13/2021 in O.S.No.30/2020 seeking joint trial of the said case along with O.S.Nos.143 and 147 of 2017. The trial Court allowed joint trial, holding that some issues and evidence to be let in are common. The court also held that separate trials may lead to duplication of evidence.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The learned counsel for the petitioner submitted that the joint trial of O.S.Nos.143 and 147 of 2017 along with O.S.No.30/2020 will cause prejudice to the petitioner. It is further submitted that since O.S.No.143 of 2017 is a suit for injunction simpliciter wherein the possession of the property by the parties alone is the subject matter to be decided, there is no need to consolidate this case with O.S.No.30/2020 wherein respondent No.1 seeks declaration of title over a larger extent of property.

4. The learned counsel for respondent No.1 contended that consolidation of the suits would meet the ends of justice.



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5. The plaint property in O.S.No.30/20 is 5 acres and 32 cents of land in old Survey Nos.58/9, 41/1,4,5,6 in Unnikulam Village in Thamarassery Taluk. The plaint schedule properties in O.S.Nos.143 & 147 of 2017 also form part of the plaint property in O.S.No.30/2020. The plaintiffs in O.S.Nos.143 and 147 of 2017 are the defendants in O.S.No.30/2020.

6. The Civil Procedure Code does not specifically provide for consolidation of suits or other proceedings. Equity, justice, convenience and necessity govern the question of whether the joint trial of suits or other proceedings is required or not. The principle of prejudice may also be taken into account when the court orders a joint trial. In **Chitivalasa Jute Mills v. Jaypee Rewa Cement (AIR 2004 SC 1687)**, the Supreme Court observed that consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits or proceedings enables the two suits to be consolidated for trial and decision. This may relieve the parties of the need to adduce



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the same or similar oral or documentary evidence more than once in the two suits at two different trials.

7. In **Prem Lala Nahata and Another v. Chandi Prasad Sikaria (AIR 2007 SC 1247)**, on the purpose of consolidation of two suits or proceedings, the Supreme Court held thus:-

“..... Consolidation is a process by which two or more causes or matters are, by order of the court, combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions.....”

8. In **Mahalaxmi Co-operative Housing Society Ltd. v. Ashabhai Atmaram Patel (D) through Lrs. and Ors. (AIR 2013 SC 961)** the Supreme Court observed thus:-

“.....Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits



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at two different trials. Independent identity of the suits is not lost even after their consolidation.”

9. The Court can order a joint trial if it appears to it that some common question of law or fact arises in two or more proceedings or that the right to the relief claimed in them is in respect of or arises out of the same transaction or series of transactions or that for some other reason it is desirable to make an order for joint trial. An order for joint trial is considered to be useful in that it will save the expenses of two attendance by counsel and witnesses, and the trial Judge will be enabled to try the two actions at the same time and take common evidence in respect of both the claims. A joint trial is ordered when a Court finds that the ordering of such a trial would avoid overlapping of evidence being taken in two or more causes, and it will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes (Vide: **State Bank of India v. Ranjan Chemicals Limited [(2007) 1 SCC 97]**. In **Ranjan Chemicals Limited**, the Supreme Court held that the consent of the parties is not necessary for the consolidation of suits.



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10. In **Janardhanan Pillai v. Kochunarayani Amma (1976 KHC 81)**, this Court held that, after hearing both sides, if a Court feels that in the interest of justice it is necessary that two or more proceedings should be tried together, it is open to it to order so to avoid repetition of the same evidence in the different cases or to avoid the possibility of conflicting decisions in those cases or for such other justifying reasons.

11. In **Lakshmi v. Abhinay (2020 (3) KHC 174)**, this Court held that even when the court deals with different suits by way of consolidation, the issues in each suit must be separately framed and determined independently and the decision in each case, with reasons thereof, must be rendered separately.

12. In **Navabharat Vignan Trust v. Nasihudeen (2013 (1) KLT 310)**, this Court held that where the defendant in a suit institutes another suit against the plaintiff and the right to sue arises from the very same act or transaction from which the plaintiff earlier filed the suit, common questions of law or fact may arise and if the suits are allowed to proceed separately, conflicting decisions may arise.



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13. O.S.Nos.143 and 147 of 2017 are suits for injunction simpliciter. In O.S.No.30/2020, respondent No.1 traced his title by way of a 75 year old title deed. The claim of the plaintiffs in O.S.Nos.143 and 147 of 2017 is based on their possession of the properties. It cannot be said that the decision in O.S.Nos.143 and 147 of 2017 and the decision in the title suit by respondent No.1 may lead to conflict in decisions if they are separately tried. It is difficult to conclude that the claims of the parties in O.S.Nos.143 and 147 of 2017 and the claims of the parties in O.S.No.30/2020 are interlinked. The validity of the 75 year old document based on which respondent No.1 raised his claim for title over 5 acres of land in O.S.No.30/2020 does not have any direct bearing on the decisions to be taken in O.S.Nos.143 and 147 of 2017.

14. The specific case of the petitioner is that if O.S.Nos.143 & 147 of 2017 are linked with O.S.No.30/2020, which is a title suit, the adjudication of the simple injunction suits may be delayed. The petitioner contended that the attempt of respondent No.1 was to delay the trial in O.S.Nos.143 & 147 of 2017. Those suits were instituted three years prior to the institution of O.S.No.30/2020. The nature of



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evidence required to be taken in O.S.Nos.143 & 147 of 2017 is different from the nature of evidence to be tendered in O.S.No.30/2020. It is reported that the completion of the trial in O.S.No.30/2020 may take years. A decision on the possession of the plaint schedule properties in O.S.Nos.143 & 147 of 2017 has no direct bearing on the decisions and conclusions in O.S.No.30/2020, and whatever the decision in O.S.Nos.143 & 147 of 2017, no prejudice would be caused to the plaintiff in O.S.No.30/2020. The plaintiffs in O.S.Nos.143 & 147 of 2017 have the right to get their suits adjudicated as early as possible. When O.S.Nos.143 & 147 of 2017 are linked with O.S.No.30/2020 for trial, it will necessarily delay the trial in O.S.Nos.143 & 147 of 2017, which were ripe for trial at the time of institution of O.S.No.30/2020.

15. The validity of an order is to be decided on the touchstone of "prejudice". The ultimate test is always the test of prejudice. A separate trial of the suits will not cause any prejudice to respondent No.1, whereas a joint trial will prejudice the plaintiffs in O.S.Nos.143 & 147 of 2017.

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Therefore, this Original Petition is allowed. The order dated 24.5.2022 in I.A.No.13/2021 in O.S.No.30/2020 on the file of the Munsiff's Court, Koyilandy is set aside. The trial Court is directed to delink O.S.Nos.143 & 147 of 2017 from O.S.No.30/2020. The trial Court shall expeditiously complete the proceedings in O.S.Nos.143 & 147 of 2017 and dispose of the same, at any rate, within a period of six months from the date of production of a certified copy of this judgment.

Sd/-
K.BABU
Judge

TKS



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APPENDIX OF OP(C) 1279/2022

PETITIONER'S EXHIBITS

Exhibit-P1 TRUE COPY OF THE PLAINT IN OS.NO.143/2017 BEFORE THE MUNSIF COURT, KOYILANDY DATED 01.08.2017

Exhibit-P2 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST DEFENDANT IN OS.NO.143/2017 BEFORE THE MUNSIF COURT, KOYILANDY

Exhibit-P3 TRUE COPY OF THE PLAINT IN O.S.NO.147/2017 FILED BEFORE THE MUNSIF COURT, KOYILANDY

Exhibit-P4 TRUE COPY OF THE PLAINT IN O.S.NO.30/2020 FILED BEFORE THE MUNSIF COURT, KOYILANDY

Exhibit-P5 TRUE COPY OF THE WRITTEN STATEMENT FILED BY 2ND DEFENDANT (PETITIONER HEREIN) IN OS.NO.30/2020 BEFORE THE MUNSIF COURT, KOYILANDY.

Exhibit-P6 TRUE COPY OF THE ORDER IN I.A.NO.13/2021 IN O.S.NO.30/2020 DATED 24.05.2022 OF THE MUNSIF COURT, KOYILANDY.

RESPONDENTS' EXHIBITS

EXHIIT R1(a) TRUE COPY OF I.A. NO. 11/2023 IN O.S. NO. 147/2017 ON THE FILE OF THE MUNSIF'S COURT, KOYILANDY.

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EXHIBIT R1 (b) TRUE COPY OF DAILY STATUS OF O.S.NO.147/2017 ON THE FILE OF THE MUNSIFF'S COURT, KOYILANDY DOWNLOADED FROM THE WEBSITE.

EXHIBIT R1 (c) TRUE COPY OF I.A.NO.14/2024 IN O.S.NO. 147/2017 ON THE FILE OF THE MUNSIFF'S COURT, KOYILANDY.

EXHIBIT R1 (d) TRUE COPY OF DAILY STATUS OF O.S. NO. 147/2017 ON THE FILE OF THE MUNSIFF'S COURT, KOYILANDY.

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