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O.P (C) No.2794 of 2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 9TH DAY OF MAY 2025 / 19TH VAISAKHA, 1947

OP(C) NO. 2794 OF 2019

AGAINST THE ORDER/JUDGMENT DATED IN OS NO.42 OF 2015 OF SUB

COURT, MANJERI

PETITIONER/1ST RESPONDENT:

K.C.SIVASANKARA PANICKER,
AGED 83 YEARS,
SON OF ELATH RAVUNNI PANICKER, KAILAS HOUSE,
OORAGAM, MELMURI P.O,
MALAPPURAM DISTRICT, PIN 676 519

BY ADVS.
R.RAJESH KORMATH
SRI.K.DILIP

RESPONDENTS/PETITIONER & RESPONDENTS 3 TO 5:

- 1 K.C.VASANTHAKUMARI ALIAS K.C.VASANTHI,
AGED 63 YEARS,
DAUGHTER OF MALATHI AMMA,
KUTTIPURATH CHELATH HOUSE, OORAGAM, MELMURI P.O,
MALAPPURAM DISTRICT, PIN 676 519
- 2 AKHIL KRISHNAN,
AGED 24 YEARS,
SON OF ELATH SUNITHA, KAILAS HOUSE, OORAGAM,
MELMURI P.O, MALAPPURAM DISTRICT, PIN-676 519.



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- 3 RATHIKA LAKSHMANAN,
 AGED 56 YEARS,
 WIFE OF LAKSHMANAN, MANTHARA,
 KUTTIPURATH CHELATH HOUSE, OORAGAM,
 MELMURI P.O, MALAPPURAM DISTRICT, PIN-676 519
- 4 K.C GOVINDA RAJ,
 SON OF K.C MALATHI AMMA, MANTHARA,
 KUTTIPURATH CHELATH HOUSE, OORAGAM,
 MELMURI P.O, MALAPPURAM DISTRICT, PIN-676 519

BY ADVS.
MEENA A
VINOD RAVINDRANATH (K/001479/1999)
K.C.KIRAN (K/621/2006)
M.R.MINI (K/000153/1996)
M.DEVESH (K/1253/2012)
ANISH ANTONY ANATHAZHATH (K/000106/2019)
THAREEQ ANVER K. (K/000942/2018)
NIVEDHITHA PREM.V (K/001822/2023)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09.05.2025,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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'C.R'

K.BABU, J.

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Dated this the 9th day of May, 2025**JUDGMENT**

Defendant No.1, in a suit, challenges the order of the Trial Court granting leave to the plaintiff to deliver interrogatories, in this Original Petition. The plaintiff and defendant Nos.1 and 2 are the members of the Kuttipurath Chelath Tharawad. Defendant No.2 is the mother of the plaintiff. Defendant No.1 is the uncle of the plaintiff.

2. The Plaint Schedule Properties, along with some other properties, originally belonged to the tharawad. Some of the members of the tharawad filed O.S No.76/1960 before the Subordinate Judge's Court, Kozhikode seeking partition of the tharawad properties. The Court decreed the suit. A preliminary decree was passed on 03.01.1970. In the final decree proceedings,



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the properties were partitioned. The plaintiff was a minor at the time of passing the final decree. Her mother (defendant No.2) had acted as her guardian. Later, defendant No.2 remarried. The plaintiff attained majority on 09.07.1972. She was married off. After the marriage, the plaintiff shifted her residence to Goa. Item numbers 32, 36 and 81 properties in the final decree were set apart to the share of the plaintiff and defendant No.2. Item numbers 256(B), 47(9), 49(3), 66(A), 419 and 349 to 382 properties were set apart to the share of defendant No.1, who was defendant No.4 in the suit.

3. In the suit, the plaintiff pleaded the following:

The plaintiff's share in the plaint schedule properties is managed by defendant No.2 on her behalf. The properties are in the joint ownership of the plaintiff and defendant No.2. Defendant No.2 is living with her children in the second wedlock. On 01.10.2014, the plaintiff approached defendant No.2 and requested for partition and separate possession of her share in the plaint schedule properties.



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She was not willing to partition. Defendant No.2 instructed the plaintiff to approach her brother, who is now managing the properties. So, the plaintiff approached defendant No.1. He claimed that the property belonged to him and the plaintiff had no share in it. On enquiry, the plaintiff realised that defendant No.1 had fraudulently created document No.4283/2012, styled as a gift deed in favour of defendant No.3, his grandson. Defendant No.1 has no right or authority to register document No.4283/2012. It is a sham document created to defraud the plaintiff with the connivance of defendant No.2. The plaintiff is entitled to one-half share in the properties.

4. The defendants resisted the suit, raising the following contentions:

Neither the plaintiff nor any members of the family, who were parties to O.S No.76/1960 or in the final decree proceedings, filed any execution application to execute the decree. The final decree passed on 30.08.1971 stands unexecuted. The entire



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properties involved in O.S No.76/1960 have become co:shareship properties. The plaintiff should have filed an application to execute the final decree on or before 09.07.1974. The statement that the plaintiff and defendant No.2 are in joint possession of the property is not correct. Defendant No.1 was also a party to the proceedings in the suit and in the final decree. He is supposed to be a co-sharer with respect to the plaint schedule items 1 to 3, just like the plaintiff and defendant No.2.

5. Defendant No.1 incorporated amendments in the written statement contending that neither the plaintiff nor defendant No.2 has any title or interest in the properties. Defendant No.3 is in possession of the property as per settlement deed No.4283/2012.

6. The plaintiff filed I.A No.255/2017 seeking leave to deliver interrogatories as per Order XI Rule 1 of CPC. On 28.07.2017, that application was dismissed as not pressed. Thereafter, the plaintiff filed I.A No.843/2019 seeking leave to deliver interrogatories to defendant No.1. That application was allowed on 15.10.2019. The



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Court directed defendant No.1 to file an answer-affidavit on or before 26.10.2019. This order is under challenge in this Original Petition.

7. I have heard the learned counsel appearing for the petitioner/defendant No.1 and the learned counsel appearing for respondent No.1/plaintiff.

8. The learned counsel for the petitioner made the following submissions:

- (i) I.A No.843/2019, an application seeking leave to deliver interrogatories, is not maintainable as I.A No.255/2017, a previous application, was dismissed as not pressed.
- (ii) The trial in the case is over.
- (iii) The interrogatories sought to be delivered are not relevant to the subject matter.

9. The learned Senior Counsel made the following submissions:



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- (a) Dismissal of the earlier application seeking leave to deliver interrogatories as not pressed does not act as a bar for filing a subsequent application seeking the same relief based on changed circumstances.
- (b) The interrogatories delivered are relevant to the subject matter.

10. The object and purpose of serving interrogatories is to enable a party to require information from his opponent for the purpose of maintaining his own case. Answering the interrogatories might often shorten the trial proceedings and save the time of the court and parties, besides saving expenses for summoning witnesses, documents and the like. This power must not be confined within narrow limits. It should be used liberally to serve the interest of justice. Nevertheless, the power is to be exercised with great care and caution so that it is not abused by any party.

11. There is a slight difference in approach on the law in



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England and India.

The Law in England

12. In England, interrogatories are allowed for the following purposes:

- (1) To ascertain the “nature” of opponent's case or the material facts constituting his case.
- (2) To support applicant's case, either
 - (a) directly, by obtaining admissions, or
 - (b) indirectly, by impeaching or destroying the adversary's case.

The Law in India

13. The interrogatories have to be confined to the facts relevant to the matters in question in the suit. A Court of law will not allow a party to go on a fishing expedition or embark on a roving inquiry in the grab of interrogatories. The Court cannot allow a party to ask questions in interrogatories which have neither any relevance nor nexus with the matter in issue. The



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interrogatories should not be allowed to ascertain the nature of one's opponent's case. But it may be allowed to support one's own case.

14. The power to serve interrogatories is not meant to be confined within narrow technical limits. However, the power is to be exercised within certain limits and with considerable care and caution {Vide: **P. Balan v. Central Bank of India, Calicut (1999 SCC OnLine Ker 184)**, **Jamaitrai Bishansarup v. Rai Bahadur Motilal Chamaria (1959 SCC OnLine Cal 79)**, **Sharda Dhir v. Ashok Kumar Makhija (2002 SCC OnLine Del 688)** and **Ali Kadar Syud Hossain Ali v. Gobind Dass [(1890) 17 Cal 840]}**}.

15. The interrogatories may not be allowed in the following cases:

- (I) A party is not entitled to administer interrogatories for obtaining discovery of facts which constitute exclusively the evidence of his adversary's case or title



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{Benbow v. Low [(1880) 16 CD 93]}.

(II) A party is not entitled to interrogate as to any confidential communications between his opponent and his legal advisors **{State Bank of India v. J.K. Sohan Singh (1962 SCC OnLine Punj 318)}**.

(III) A party is not entitled to execute interrogatories that involve disclosures injurious to public interests.

16. In **Raj Narain v. Indira Nehru Gandhi [(1972) 3 SCC 850]**, the Apex Court on the law of interrogatories observed thus:

“26. Questions that may be relevant during cross-examination are not necessarily relevant as interrogatories. The only questions that are relevant as interrogatories are those relating to “any matters in question”. The interrogatories served must have reasonably close connection with “matter in question.....”

17. This Court in **K.L. Constantine v. Bruss Foods B.V. (2012**



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SCC OnLine Ker 31599) observed that applications for discovery, interrogatory etc, have to be moved before the case proceeds for trial.

18. In **Bhavans Vidya Mandir and Another v. Shibu K. P. and Others [2017 (1) KHC 498]**, this Court held that the power under Order XI Rule 1 CPC to deliver interrogatories cannot be extended in par with the right of cross-examination of a witness. This Court also held that leave can be granted by the Trial Court only to the matters in question in the suit and it is not permissible to deliver interrogatories which do not relate to any matters in question in the suit, notwithstanding that they might be admissible on the oral cross-examination of a witness.

19. In **Sreejith Varma v. Poonjar Koyikkal Royal Family Trust [2020 (4) KHC 363]**, this Court held that when an application for leave to deliver interrogatories is sought for by a party, the Court will have to consider the same and decide whether the questions therein are necessary, either for disposing fairly of the suit or for



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saving costs. The Court further observed that in doing so, certainly, the Court will have to consider the broad contours of the plaint allegations, the defence of the defendant impelled in the written statement, and the nature and tenor of the interrogatories.

20. In the context of the pleadings extracted above, the plaintiff sought to deliver the following interrogatories to defendant No.1:

- (1) Were you not a party in the final decree proceedings in O.S No.76/1960 before the Sub Court, Tirur? Have you taken possession of the properties allotted to you as per the final decree? Are you still in possession of those properties? Have you alienated any of those properties? If so, to whom and as per which documents?
- (2) To which document did defendant No.1 trace his title while executing Gift Deed No.4283/2012 of



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SRO, Malappuram, in favour of defendant No.3?

(3) With effect from which year defendant No.1 remitted tax in respect of the property covered by Deed No.4283/2012 (Gift Deed)?

(4) Had defendant No.1 been in possession of the property over and above the ceiling as per the Kerala Land Reforms Act?

(5) Did defendant No.1 know the pendency of the Ceiling Case No.48/2016 before the Tirurangadi Land Tribunal?

21. The relevant portion of the impugned order is extracted below:

“On hearing both side. The petitioner had sought an order from the court to serve interrogatories. That can be ordered with the leave of court. If the plaintiff hadn't produced final decree judgment, it is not a ground to dismiss the petition. Moreover the petitioner had a case that the final decree Judgment is not available in the court. The 1st defendant has to answer as to on which right he is possessing properly. All other matters can be



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considered in evidence. In such circumstances it is found that the defendants has to answer interrogatories.

In the result, petition is allowed.”

It appears from the impugned order that a contention was raised to resist the application that the plaintiff did not produce the final judgment and decree in O.S No.76/1960.

22. What weighed the Court below to order interrogatories was that the final judgment and decree were not available in the Subordinate Judge's Court, Tirur. The Trial Court also held that defendant No.1 was bound to answer as to under what right he possessed the property gifted to defendant No.3. The Trial Court also observed that all those matters could be considered in evidence, and therefore, defendant No.1 has to answer the interrogatories. Going by the interrogatories sought to be delivered, it cannot be said that the plaintiff's attempt is to go on a fishing expedition or embark on a roving inquiry. The attempt of the plaintiff is also not to obtain discovery of facts which constitute exclusively the evidence of adversary's case or title. Defendant



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No.1 admitted in the written statement that the property involved was allotted to the share of the plaintiff and her mother.

23. It is reported that the records relating to final decree proceedings are not available in the Subordinate Judge's Court, Tirur. The plaintiff has the right to require defendant No.1 by way of interrogatories as to his title over the property covered by the gift deed executed by him in favour of his grandson (defendant No.3).

24. It is true that the trial proceedings are in the final stage. I am of the view that the merit of the petition seeking leave to deliver interrogatories is to be decided on the touchstone of 'prejudice' even in the advanced stage of trial. The ultimate test shall be the 'test of prejudice'. In the present case, defendant No.1 has no case that any prejudice would be caused to him by way of answering the questions delivered.

25. The answer to a question relating to defendant No.1's title over the property stated to have been gifted to his grandson cannot be the discovery of a fact which constitutes exclusively defendant



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No.1's evidence. For the fair disposal of the case, I am of the considered view that the interrogatories sought to be delivered are relevant. The interrogatories relate to only the matters in question. Those questions are not put to test the credibility of defendant No.1.

26. Another contention of the learned counsel for defendant No.1 is that with the dismissal of I.A No.176/2018, as not pressed, the plaintiff had consented to decide the petition against her. The learned counsel relied on **Mohammed Master v. Abu Haji (1981 KLT 578)** to fortify his contention. In **Mohammed Master**, the Division Bench held that as a result of 'not pressing' certain allegations and grounds raised in the pleadings, a litigant submits that the issues arising therefrom may be decided against him and in favour of his opponent. It was virtually a decision by consent. In that, the party asserting or disputing, conceded that his assertion or dispute, as the case may be, merits no consideration as he cannot substantiate the same.



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27. The plaintiff consented to dismiss I.A No.255/2017 as not pressed on 28.07.2017 before the commencement of the trial. The trial commenced on 07.03.2019. The plaintiff prayed for time to produce the documents. On 28.03.2019, the plaintiff reported in the Court that the final judgment and decree in I.A No.512/1970 on the file of the Sub Court, Tirur, which are relevant documents, were not traced out. After that, the plaintiff filed I.A No.843/2019, which was allowed by the Court on 15.10.2019. A subsequent application seeking leave to deliver interrogatories was filed on a changed cause of action. It cannot be said that the plaintiff is barred from making a second application on a subsequent cause of action. The challenge on the impugned order on this ground also falls to the ground. Therefore, I find no reason to interfere with the order impugned.

The Original Petition (Civil) stands dismissed.

Sd/-
K.BABU,
JUDGE

KAS



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APPENDIX OF OP(C) 2794/2019

PETITIONER EXHIBITS

- | | |
|------------|---|
| EXHIBIT P1 | TRUE COPY OF THE PLAINT DATED 28-07-2015 IN O.S NO. 42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI |
| EXHIBIT P2 | TRUE COPY OF THE WRITTEN STATEMENT DATED 15-09-2015 ORIGINALLY FILED BY DEFENDANTS 1 AND 3 IN O.S NO. 42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI |
| EXHIBIT P3 | TRUE COPY OF I.A NO. 598 OF 2018 AND AFFIDAVIT ACCOMPANYING THE SAME IN O.S NO. 42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI |
| EXHIBIT P4 | CERTIFIED COPY OF I.A NO. 255 OF 2017 AND THE ACCOMPANYING AFFIDAVIT DATED 9-3-2017 IN O.S NO.4 2 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI |
| EXHIBIT P5 | TRUE COPY OF THE COUNTER FILED BY THE PETITIONER FIRST DEFENDANT TO I.A NO. 255 OF 2017 IN O.S NO. 42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI |
| EXHIBIT P6 | TRUE COPY OF THE AFFIDAVIT ACCOMPANYING I.A NO. 843 OF 2019 IN O.S NO. 42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE-JUDGE OF MANJERI |



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- EXHIBIT P7 TRUE COPY OF THE COUNTER DATED 12-10-2019 FILED TO IA NO. 843 OF 2019 IN O.S NO. 42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI
- EXHIBIT P8 CERTIFIED COPY OF THE ORDER DATED 15-10-2019 IN IA NO. 843 OF 2019 IN O.S NO. 42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI
- EXHIBIT P9 CERTIFIED COPY OF THE ORDER DATED 28/07/2017 IN IA.NO.255 OF 2017 IN O.S.NO.42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI.
- EXHIBIT P10 TRUE COPY OF I.A.NO.843 OF 2019 IN O.S.NO.42 OF 2015 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF MANJERI.