

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 23<sup>RD</sup> DAY OF FEBRUARY 2024 / 4TH PHALGUNA, 1945

OP(C) NO. 2702 OF 2023

ORDER DATED 16.11.2023 IN I.A 7/2023 IN OS NO.85 OF 2011

OF ASSISTANT SESSIONS COURT/SUB COURT,MAVELIKKARA

PETITIONER/1ST RESPONDENT/1ST DEFENDANT:

M.G. JOHN

AGED 72 YEARS

S/O. GEE VARGHESE, "GRACE DALE",  
THAZHAKKARA.P.O., MAVELIKKARA VILLAGE, ALAPPUZHA  
DISTRICT, PIN - 680 102

BY ADVS.

K.V.JAYACHANDRAN

RAJU V.MATHEW

HARISHANKAR K.J.

RESPONDENTS/PETITIONER IN I.A & PLAINTIFF/2ND RESPONDENT

IN I.A & 2ND DEFENDANT(DIED) AND 3RD DEFENDANT SOUGHT TO  
BE IMPEADED:

- 1 JOHN PHILIP  
AGED 68 YEARS  
S/O. C.C.PHILIP, RESIDING AT CHANKAL HOUSE, ALA,  
KODUKURANJI, CHENGNOOR, PIN - 689 508
- 2 N.G.SAMUEL (DIED)  
AGED 66 YEARS  
S/O.GEEVARGHESE, MANAGING DIRECTOR, M/S.BUSINESS  
INDIA BUILDERS AND DEVELOPERS LIMITED NO.62,  
KOCHI, RESIDING AT NEDIYAKALAYIL, BATHANIA,  
KULANADA, PANTHALAM, PATHANAMTHITTA.,  
PIN - 689 503
- 3 BUSINESS INDIA BUILDERS AND DEVELOPERS LTD  
REPRESENTED BY ITS MANAGING DIRECTOR CHERIAN  
PHILIP, 32/1380, B-3, PIPELINE ROAD,  
PALARIVATTOM, ERNAKULAM,  
PIN - 682 025

**BY ADVS.  
ALEX K. JOHN  
SAJI. P. JOSEPH  
C.C.MATHEW(K/142/1976)  
K.T.SAJU(K/680/2008)  
G.MINI (PALATH)(K/1094/1999)  
A.SEENA(K/685/2009)  
THANKARAJAN P.K.(K/000224/1982)  
SALI. P. MATHEW (MUNNAR)(K/370/1983)  
DEEPESH E.S(K/420/2020)  
REENA JACOB(K/1323/2000)  
SRAYAS JOSEPH(K/00000059/2023)**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON  
23.02.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**JUDGMENT**

**Dated, this the 23<sup>rd</sup> day of February 2024**

The petitioner herein is the 1st defendant in the suit, O.S.No.85/2011, pending before the Sub Court Mavelikkara. Petitioner is aggrieved by Ext.P5 order, which allowed an impleadment sought for by the plaintiff in the suit, who is the first respondent herein.

2. Learned counsel for the petitioner would submit that, originally the suit was one for specific performance of a contract, entered into by and between the plaintiff and a company. Without arraying the company as a defendant, the suit was filed against defendants 1 and 2. Pending litigation, the second defendant passed away. The plaintiff filed an application to implead the legal heirs of the 2nd defendant. This was objected to by the petitioner/1st

defendant, pointing out that the company ought to have been made a party in the suit and that impleading the legal heirs of the 2<sup>nd</sup> defendant will not suffice. Sidelining that objection, the impleading petition was allowed by the Sub Court Mavelikkara. Challenging the said order, the present petitioner approached this court by filing an Original Petition, which culminated in Ext.P2 judgment. In Ext.P2, the contention of the present petitioner was accepted, the order of the Sub Court, Mavelikkara permitting impleadment was set aside and the case was remanded to the trial court. Thereupon, the plaintiff, who is the first respondent herein, filed an application to implead the company as an additional defendant. This is seriously objected by the first defendant in the suit. Ignoring such objection, Ext.P5 order has been passed allowing the impleadment,

which is grossly illegal, is the submission made by the petitioner.

3. Having heard the counsel for the petitioner, this court finds little merit in the instant Original Petition. This court notice that the contention of the present petitioner /1st defendant before this court in the earlier round of the litigation, which culminated in Ext.P2 judgment was that, an application for impleadment of the legal heirs of the 2nd defendant by itself is not sufficient; instead the company ought to have been impleaded, in as much as the agreement was by and between the petitioner and the company. It is only in recognition of that contention that the earlier order of the Sub Judge, Mavelikkara was set aside and Ext. P2 judgment was passed, remanding the matter to the Sub Court for consideration afresh. In the light of that contention raised by the present petitioner therein, the first

respondent/plaintiff filed an application for impleadment of the company. Now, the plaintiff cannot be heard to contend that such impleadment cannot be allowed, since, it is made only in accord with the objection raised by the present petitioner in the earlier round.

In the circumstances, challenge against Ext.P5 cannot be sustained and the same would stand repelled. Consequently, the Original Petition will also stand dismissed.

**Sd/-**

**C.JAYACHANDRAN, JUDGE**

SSG

**APPENDIX OF OP(C) 2702/2023**

**PETITIONER'S EXHIBITS**

<b>Exhibit P1</b>	<b>THE TRUE COPY OF THE PLAINT DATED 21-03-2011 IN O.S.NO.85/2011 OF THE SUB COURT, MAVELIKKARA</b>
<b>Exhibit P2</b>	<b>THE TRUE COPY OF THE ORDER DATED 15-09-2023 IN O.P.(C)NO.1628/2023 OF THIS HON'BLE COURT</b>
<b>Exhibit P3</b>	<b>THE TRUE COPY OF THE IMPEADING PETITION I.A.NO.7/2023 DATED 30-10-2023 FILED BY THE 1ST RESPONDENT</b>
<b>Exhibit P4</b>	<b>THE TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A.NO.7/2023 DATED 14-11-2023</b>
<b>Exhibit P5</b>	<b>THE TRUE COPY OF THE ORDER DATED 16-11-2023 IN I.A.NO.7/2023 IN O.S.NO.85/2011 OF THE SUB COURT MAVELIKKARA</b>