

I.A.5/2023
O.S 31/2020

IN THE COURT OF THE SUBORDINATE JUDGE , PERUMBAVOOR

Present :- Sri. Johnson M.I., Sub Judge

Wednesday, the 8th day of November, 2023 / 17th Karthika 1945

I.A.No.5/2023 in O.S.No.31/2020

Petitioner / 2nd Defendant :-

Dr.K.R.David Tharakan,
S/o Late K.T.Rajan Tharakan,
Aged 49 years, Kallarakkal House,
House No.5, Aswathy Gardens,
Ambalathara, Poonthura P.O.,
Thiruvananthapuram - 695026.

By Adv.M/s.Sunil Kuriakose, Mary Treasa P.L
& Jino K.P.

Respondents / Additional Plaintiffs / Defendants :-

1. Eldho Tharakan, age not known,
Kallarakkal House, S/o Late K.Kora Tharakan,
Old Muvattupuzha Road, Rayamangalam,
Kunnathunadu, Near Nellimolam Junction,
Via Kuruppampady P.O, 683545.
2. Kunjamma Kora Tharakan, aged 85 years,
W/o Late K.Kora Tharakan, Kallarakkal House,
Old Muvattupuzha Road, Rayamangalam,
Kunnathunadu, Near Nellimolam Junction,
Via Kuruppampady P.O, 683545.

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3. Peter Tharakan, S/o Tharu Tharakan,
Aged 75 years, Mahatma Nagar, Phase - 1,
Perumbavoor, PIN – 683542.
4. Paul Kilithadan, aged 72 years (deceased),
Kilithattil House, Kakkanad, Thengodu,
Vikas Nagar, Kakkanad, PIN - 682030.
5. Eugene Paul, aged 53 years, S/o Late Paul Kilithadan,
Kilithattil House, Kakkanad, Thengodu,
Vikas Nagar, Kakkanad, PIN - 682030.
6. Kunjamma Paul Tharakan, W/o Late Paul Tharakan,
Madathodu Pecchinamkol Road,
Off Old Muvattupuzha Road,
Near Nellimolam Junction,
Via Kuruppampady P.O, 683545,
Kakkanad, Thengodu,
Vikas Nagar, Kakkanad.
7. Saira Paul Tharakan, aged 40 years,
Madathodu Pecchinamkol Road,
Off Old Muvattupuzha Road,
Near Nellimolam Junction,
Via Kuruppampady P.O, 683545.
8. T.G.John, S/o T.M.George,
Aged 60 years, Kuttikattil House,
Ayyambilly, 682501, North Paravur.

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9. Jasmin Joseph, W/o T.G.Mathew,
Aged 56 years, TSRA - 42, First Floor,
Kochappilly Appachan Road, Opp.POC,
Edappilly, Ernakulam, PIN 682024.
10. Elsa Mathew, D/o Late T.G.Mathew,
Aged 34 years, TSRA - 42, First Floor,
Kochappilly Appachan Road, Opp.POC,
Edappilly, Ernakulam, PIN 682024.

R1, R2 & R5 to R10 - No Vakalath.

R3 - By Adv.G.Udayakumar.

R4 - Died.

This petition is filed under Section 151 and Section 10 of the Code of Civil Procedure to remove the suit from the list of 08/11/2023 and also to adjourn the proceedings under Section 10 of the Code of Civil Procedure and is coming on for hearing on 08.11.2023 in the presence of the above counsels and the court on the same day passed the following :-

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ORDER

Objection filed. I heard the counsel for both sides.

2. Petitioner herein is the 2nd defendant in the suit. In this petition petitioner has stated that earlier there was a suit as O S 1/2018 before Addl.District Court, North Paravur for probate of a will with respect the plaint schedule property herein and the same was dismissed against which R.F.A 156/2020 is pending before Hon'ble High Court with the said allegations petitioner has prayed for stay of trial of this suit under Section 10 of CPC.

3. It can be seen that this is a case for partition of plaint schedule property and O S 1/2018 was for probate of a will. Hence it can be seen that, subject matter of both the suits are not one and the same. Hence, trial of this suit cannot be stayed under Section 10 of CPC. Counsel for respondent relied on the decision of Hon'ble High Court of Delhi in 2008 (4) KLT SN 94 (C No.83) Del for substantiating the same. From that decision, it can be seen that in a case like the case on heard suit is not to

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be stayed under Section 10 of CPC. Hence, this petition is only to be dismissed.

In the result IA is dismissed. No costs.

(Pronounced by me in the Open court on this the 8th day of November, 2023)

Sd/-
JOHNSON M.I
SUB JUDGE

APPENDIX :- NIL

Sd/-
Sub Judge

Pkm
Compd by.Akr.

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ORDER
DATED: 08.11.2023