



2025:KER:12818

O.P (C) No.299 of 2021

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 11TH DAY OF FEBRUARY 2025 / 22ND MAGHA, 1946

OP(C) NO. 299 OF 2021

AGAINST THE ORDER DATED 08.07.2019 IN I.A NO.1574 OF 2019
IN OS NO.616 OF 2014 OF ADDITIONAL MUNSIF COURT, KOTTAYAM

PETITIONER/PLAINTIFF:

M.A.MUHAMMED JALEEL,
AGED 77 YEARS,
S/O. LATE SAMAD, MADATHIL HOUSE,
KANJIRAPPALLY P.O, KOTTAYAM 686 507

BY ADVS.
V.S.AFSAL KHAN
SRI.V.A.SHAJI
SRI.C.K.SASI
SHRI.S.A.SHAKKUR NAVAZ

RESPONDENTS/DEFENDANT:

- 1 ABRAHAM CHANDY,
PALLATHUSSERIL HOUSE, MOOLEDAM P.O,
KOTTAYAM (DIED)
- 2 TAHSILDAR,
TALUK OFFICE, KOTTAYAM
- 3 DISTRICT COLLECTOR,
COLLECTORATE P.O, KOTTAYAM



2025:KER:12818

O.P (C) No.299 of 2021

2

- 4 P.A CHANDY @ ELIYACHAN (DIED)
PALLATHUSSERIL HOUSE,
MOOLEDAM P.O, KOTTAYAM
- 5 ANNAMMA,
W/O. P.A CHANDY, PALLATHUSSERIL HOUSE,
MOOLEDAM P.O, KOTTAYAM
- 6 KURIAN CHANDY,
S/O. P.A CHANDY, PALLATHUSSERIL HOUSE,
MOOLEDAM P.O, KOTTAYAM
- 7 THOMAS CHANDY,
S/O. P.A CHANDY, PALLATHUSSERIL HOUSE,
MOOLEDAM P.O, KOTTAYAM

BY ADVS.
S.RANJIT (KOTTAYAM)
GOKUL DAS V.V.H.
P.K.VINOD KUMAR
G.SHEEBA, GOVERNMENT PLEADER

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
11.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



2025:KER:12818

O.P (C) No.299 of 2021

3

K.BABU, J.

O.P (C) No.299 of 2021

Dated this the 11th day of February, 2025

JUDGMENT

The challenge in this Original Petition is to Ext.P5 order dated 08.07.2019 in I.A No.1574/2019 in O.S No.616/2014 on the file of the Additional Munsiff's Court, Kottayam.

2. The petitioner is the plaintiff in the Original Suit. The plaintiff originally instituted the suit for fixation of boundary and permanent prohibitory injunction against the defendants. Defendant Nos.2 and 3 in the party array are the Tahsildar, Kottayam and the District Collector, Kottayam respectively. The others are the party defendants. The petitioner filed an application to withdraw the suit with liberty to institute a fresh suit on the basis of the same cause of action under Order XXIII Rule 1 of the CPC. The Trial Court rejected the application holding that the petitioner has not established the required grounds to seek relief under Order



2025:KER:12818

O.P (C) No.299 of 2021

4

XXIII Rule 1 CPC.

3. Heard both sides.

4. The petitioner in the application seeking withdrawal of the suit pleaded the following grounds:

- (a) The plaint suffers formal defect by reason of want of notice under sub-section (1) of Section 80 of the CPC.
- (b) In view of the dispute raised by the party defendants on the northern boundary of the property of the plaintiff, the relief of fixation of boundary is to be incorporated.
- (c) The plaintiff also requires to incorporate the relief of recovery of possession.

5. Even before the filing of the application, the plaintiff had



2025:KER:12818

O.P (C) No.299 of 2021

5

sought for amendments to include the relief of recovery of possession in respect of 1.75 cents of land and to declare document No.1759/2010 as void. Originally, the plaintiff had prayed for relief of fixation of boundary. The Trial Court held that the grounds pleaded by the plaintiff to withdraw the suit with liberty to institute a fresh suit based on the same cause of action do not subsist. Therefore, the Trial Court dismissed the application.

6. The plaintiff had sought for leave under sub-section (2) of Section 80 of the CPC. The Court below had granted leave under sub-section (2) of Section 80 of the CPC. Therefore, the defect relating to want of notice under sub-section (1) of Section 80 of the CPC does not subsist. In view of the incorporation of the amendments as early as in 2016, the other defect pleaded in the petition also do not subsist.

7. I find no reason to interfere with the impugned order based on the grounds pleaded in the petition.

Therefore, the Original Petition stands dismissed. The



2025:KER:12818

O.P (C) No.299 of 2021

6

petitioner is at liberty to move a further application seeking withdrawal based on any other formal defects as contemplated in Order XXIII Rule 1 of the CPC.

Sd/-
K.BABU,
JUDGE

KAS



2025:KER:12818

O.P (C) No.299 of 2021

7

APPENDIX OF OP(C) 299/2021

PETITIONER EXHIBITS

- | | |
|-------------------|---|
| EXHIBIT P1 | TRUE COPY OF THE PLAINT IN O.S NO.
616/2014 ON THE FILE OF THE MUNSIFF
COURT, KOTTAYAM DATED 1-09-2014 |
| EXHIBIT P2 | TRUE COPY OF THE WRITTEN STATEMENT
FILED BY THE 1ST DEFENDANT DATED 24-01-
2015 BEFORE THE MUNSIFF COURT, KOTTAYAM |
| EXHIBIT P3 | TRUE COPY OF THE PETITION IN I.A NO.
1574/2019 IN O.S NO. 616/2004 FILED
WITH THE PETITIONER DATED 30-05-2019
BEFORE THE MUNSIFF COURT, KOTTAYAM |
| EXHIBIT P4 | TRUE COPY OF THE OBJECTION IN I.A NO.
1574/2019 FILED BY THE 1ST DEFENDANT 7-
6-2019 BEFORE THE MUNSIFF COURT,
KOTTAYAM |
| EXHIBIT P5 | TRUE COPY OF THE ORDER DATED 8-7-2019
I.A NO. 1574/2019 IN O.S NO. 616/2014
BEFORE THE MUNSIFF COURT, KOTTAYAM |