

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 17TH DAY OF JUNE 2022 / 27TH JYAISHTA, 1944

OP(C) NO. 1600 OF 2021

IN OS 121/2016 OF MUNSIF COURT, VARKALA



PETITIONER:

BIJOY
AGED 40 YEARS
S/O.SAHADEVAN, KONCHIRAYIL HOUSE, AYIROOR, VARKALA,
THIRUVANANTHAPURAM 695 310

BY ADVS.
S.K.ADHITHYAN
KEERTHI S. JYOTHI

RESPONDENTS:

- 1 GOPINATHAN
AGED 83 YEARS
S/O.NARAYANANASARI, CHARUVILA VEEDU, PONGALAKONAM,
AYRIOR DESOM, VARKALA, THIRUVANANTHAPURAM 695 310
- 2 SATHYDEVAN
AGED 81 YEARS
S/O.NARAYANANASARI, CHARUVILA VEEDU, PONGALAKONAM,
AYRIOR DESOM, VARKALA, THIRUVANANTHAPURAM 695 310
- 3 THANKAPPAN
AGED 76 YEARS
S/O.NARAYANANASARI, CHARUVILA VEEDU, PONGALAKONAM,
AYRIOR DESOM, VARKALA, THIRUVANANTHAPURAM 695 310
- 4 NADARAJAN
AGED 73 YEARS
S/O.NARAYANANASARI, CHARUVILA VEEDU, PONGALAKONAM,
AYRIOR DESOM, VARKALA, THIRUVANANTHAPURAM 695 310
- 5 SUJATHA
AGED 65 YEARS
D/O.NARAYANANASARI, CHARUVILA VEEDU, PONGALAKONAM,
AYRIOR DESOM, VARKALA, THIRUVANANTHAPURAM 695 310
- 6 SUBHASHINI
AGED 79 YEARS



W/O.SREENIVASAN, CHARUVILA VEEDU, PONGALAKONAM,
AYIROOR DESOM, VARKALA, THIRUVANANTHAPURAM 695
310

- 7 SUDHARAMMA
AGED 62 YEARS
D/O.SUBHASHINI, CHARUVILA VEEDU, PONGALAKONAM,
AYIROOR DESOM, VARKALA, THIRUVANANTHAPURAM 695
310
- 8 SUDHARMANI
AGED 54 YEARS
D/O.SUBHASHINI, CHARUVILA VEEDU, PONGALAKONAM,
AYIROOR DESOM, VARKALA,
THIRUVANANTHAPURAM 695 310
- 9 SUJATHA
AGED 52 YEARS
D/O.SUBHASHINI, CHARUVILA VEEDU, PONGALAKONAM,
AYIROOR DESOM, VARKALA, THIRUVANANTHAPURAM 695
310
- 10 SANTHA
AGED 64 YEARS
W/O.BALAKRISHNAN, CHARUVILA VEEDU,
PONGALAKONAM, AYIROOR DESOM, VARKALA,
THIRUVANANTHAPURAM 695 310
- 11 SREEJA
AGED 44 YEARS
D/O.SANTHA, CHARUVILA VEEDU, PONGALAKONAM,
AYIROOR DESOM, VARKALA, THIRUVANANTHAPURAM 695
310
- 12 SREELAJA
AGED 42 YEARS
D/O.SANTHA, CHARUVILA VEEDU, PONGALAKONAM,
AYIROOR DESOM, VARKALA, THIRUVANANTHAPURAM 695
310
- 13 SAJEEV KUMAR
AGED 42 YEARS
S/O.BALAKRISHNAN, CHARUVILA VEEDU,
PONGALAKONAM, AYIROOR DESOM, VARKALA,
THIRUVANANTHAPURAM 695 310
- 14 JAYADAS
AGED 55 YEARS



S/O.SATHYADEVAN, CHARUVILA VEEDU,
AYIROOR DESOM, VARKALA,
THIRUVANANTHAPURAM 695 310

- 15 JALAJA
AGED 52 YEARS
D/O.SATHYADEVAN, CHARUVILA VEEDU, AYIROOR
DESOM, VARKALA, THIRUVANANTHAPURAM 695 310
- 16 JOY
AGED 50 YEARS
S/O.SATHYADEVAN, CHARUVILA VEEDU, AYIROOR
DESOM, VARKALA, THIRUVANANTHAPURAM 695 310
- 17 ARYADEVI
AGED 65 YEARS
W/O.NATARAJAN, CHARUVILA VEEDU, AYIROOR DESOM,
VARKALA, THIRUVANANTHAPURAM 695 310
- 18 ARUN
AGED 40 YEARS
S/O.NATARAJAN, CHARUVILA VEEDU, AYIROOR DESOM,
VARKALA, THIRUVANANTHAPURAM 695 310
- 19 THARA
AGED 45 YEARS
D/O.SUJATHA, CHARUVILA VEEDU, AYIROOR DESOM,
VARKALA, THIRUVANANTHAPURAM 695 310
- 20 SHUBA
AGED 42 YEARS
D/O.SUJATHA, CHARUVILA VEEDU, AYIROOR DESOM,
VARKALA, THIRUVANANTHAPURAM 695 310
- 21 ALEX
AGED 36 YEARS
S/O.SASIDHARAN, LAL VILASOM, AYIROOR DESOM,
VARKALA, THIRUVANANTHAPURAM 695 310
- 22 JAYAPRAKASH
AGED 54 YEARS
S/O.GOPINATHAN, CHARUVILA VEEDU, AYIROOR DESOM,
VARKALA, THIRUVANANTHAPURAM 695 310
- 23 MURALEEDHARAN
AGED 52 YEARS
S/O.VISHWANATHAN, SREECHITHRAM VEEDU, AYIROOR



DESOM, VARKALA, THIRUVANANTHAPURAM 695 310

- 24 BABU
AGED 54 YEARS
S/O.SUKUMARAN, LAL VILASOM, AYIROOR DESOM,
VARKALA, THIRUVANANTHAPURAM 695 310
- 25 SAHADEVAN
AGED 70 YEARS
S/O.SANKU ASARI, KOCHINJACHAYIL VEEDU, VARKALA,
THIRUVANANTHAPURAM 695 310
- 26 SETHUKUTTI
AGED 70 YEARS
W/O.SAHADEVAN, KOCHINJACHAYIL VEEDU, VARKALA,
THIRUVANANTHAPURAM 695 310
- 27 BINOY
AGED 42 YEARS
S/O.SAHADEVAN, KOCHINJACHAYIL VEEDU, VARKALA,
THIRUVANANTHAPURAM 695 310
- 28 BIJI
AGED 37 YEARS
D/O.SAHADEVAN, KOCHINJACHAYIL VEEDU, VARKALA,
THIRUVANANTHAPURAM 695 310

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
17.06.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



“C.R.”

Dated this the 17th day of June, 2022

JUDGMENT

Is it necessary that a counter-claim be headed by a cause title is the short point that arises for consideration in this original petition?

2. The petitioner's case in the original petition is that he is the 8th defendant in O.S. No.121/2016, on the file of the Court of the Munsiff, Varkala. The respondents 1 to 20 are the plaintiffs, and the respondents 21 to 28 are the defendants in the suit. The suit is filed for a decree of permanent prohibitory injunction to restrain the petitioner from trespassing into the Mambazhamoola Ganapathi Temple. The petitioner and the other defendants have raised a counter-claim. As per Exhibit P2 daily status report, the trial



court had partly decreed the suit and counter-claim. The petitioner had applied for the judgment and decree. Surprisingly, Exhibit P3 notice was issued to the learned counsel appearing for the petitioner, informing him that the office was unable to prepare the judgment and decree due to the absence of the cause title in the counter-claim. Accordingly, the petitioner had filed Exhibit P5 application to correct the cause title in the counter-claim. The application was opposed by the third respondent. The court below did not pass any orders on the application and has not issued the judgment and decree. Aggrieved by the inordinate delay on the part of the court below in issuing the certified copy of the judgment and decree, this original petition is filed.

3. Heard, Sri. S.K.Adhithyan, the learned counsel appearing for the petitioner.

4.This Court had, by order dated 22.09.2021, directed the Registry to call for a report from



the learned Munsiff to state why the judgment and decree in the suit were not issued to the petitioner.

5. The learned Munsiff has, by communication dated 24.09.2021, informed this Court that the judgment in the suit and the counter-claim was pronounced on 05.04.2021. But when the file was taken for preparing the cause title and appendix of the judgment, it was found that the counter-claim was not headed by a cause title. Due to the absence of the cause title, it was not possible for the office to prepare the judgment and decree. In the above situation, Exhibit P3 notice was issued to the learned counsel appearing for both sides. The judgment and decree have, till date, not been issued to the parties.

6. The petitioner and the other defendants in the suit have raised a counter-claim along with their written statement. Exhibit P2 status report shows that the suit and the counter-claim were



partly decreed. The stand of the court below is that the judgment and decree cannot be issued, as the counter-claim is not headed by a cause title.

7. Order VII Rule 1 of the Code of Civil Procedure reads thus :

- "1. Particulars to be contained in plaint – The plaint shall contain the following particulars:-*
- (a) the name of the Court in which the suit is brought;*
 - (b) the name, description and place of residence of the plaintiff;*
 - (c) the name, description and place of residence of the defendant, so far as they can be ascertained;*
 - (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
 - (e) the facts constituting the cause of action and when it arose;*
 - (f) the facts showing that the court has jurisdiction;*
 - (g) the relief which the plaintiff claims;*
 - (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*
 - (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits."*

8. Order VIII Rule 6A of the Code of Civil Procedure reads thus :-



“[6A. Counter-claim by defendant.-(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

2 Such counter-claim shall have the same effect as a cross- suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

3 The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

4 The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.]”

9. It is also apposite to extract Rules 11 and 15 of the Civil Rules of Practice, Kerala.

“11. Cause title of plaint, etc.- A plaint or original petition shall be headed



with a cause title as in Form No.1. The cause title shall set out the name of the Court, and the names of the parties, separately numbered, and described as plaintiffs and defendants or petitioners and respondents as the case may be.

*15. Names, etc., of parties- **The full name, age, residence, address and description of each party**, and if such is the case, the fact that a party sues or is sued in a representative character, **shall be set out at the beginning of the plaint, original petition, or memorandum of appeal as in Form No.5 but need not be repeated in the subsequent proceedings in the same suit, appeal or matter.** The description shall include the surname father's, mother's, husband's or karanavan's name as the case may be and such other particulars as may be necessary to identify the person. This applies also to parties subsequently added."*

10. A reading of the above provisions, namely, Order VII Rule 1 and Order VIII Rule 6A of the Code and Rules 11 and 15 of the Civil Rules of Practice, explicitly show that only a plaint or an original petition that needs to be headed with a cause title as in Form No.1, and the full name, age, residence and address and description of each party needs to be set out in the beginning of the plaint, original



petition or memorandum of appeal as in Form No.5, and further that the above said details need not be repeated in the subsequent proceedings in the same suit, appeal or matter.

11. Undoubtedly, a counter claim is a subsequent pleading as prescribed under Order VIII Rule 9 of the Code of Civil Procedure. Therefore, there is no legal stipulation that a counter-claim should be headed by a cause title. The stand of the court below that the judgment and decree in the suit and the counter-claim will be issued only on the petitioner incorporating a cause title is unwarranted. I hold that Exhibit P3 notice issued by the Court of the Munsiff, Varkala is wrong and against the Code of Civil Procedure and the Civil Rules of Practice, Kerala.

In the result, in the exercise of the supervisory powers of this Court under Article 227 of the Constitution of India, I allow the original petition by setting aside Exhibit P3 notice and direct the court of the Munsiff, Varkala, to forthwith

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release the judgment and decree in O.S
No.121/2016 to the petitioner, in accordance
with law.

Sd/-

**C.S.DIAS,
JUDGE**

rmm17/06/2022



HIGH COURT OF KERALA
CERTIFIED COPY



APPENDIX OF OP(C) 1600/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE JUDGMENT IN OP(C)
NO.320/2020 DATED 4/3/2020
- Exhibit P2 TRUE COPY OF THE COMPUTER PRINTOUT OF
DETAILS OF OS NO.121/2016 BEFORE THE
MUNSIFF COURT, VARKALA DATED 5.4.2021
- Exhibit P3 TRUE COPY OF THE NOTICE SERVED ON THE
PLAINTIFFS AND DEFENDANTS COUNSEL
DATED 19.4.2021
- Exhibit P4 TRUE COPY OF THE COUNTERCLAIM FILED BY
THE DEFENDANTS IN OS.121/2016 BEFORE
MUNSIFF COURT, VARKALA
- Exhibit P5 TRUE COPY OF THE IA NO.37/2021 IN OS
NO.121/2016
- Exhibit P6 TRUE COPY OF THE OBJECTION FILED BY
POWER OF ATTORNEY HOLDER OF THE 3RD
PLAINTIFF
- Exhibit P7 TRUE COPY OF I.A. NO.42/2021 IN IA
NO.37/2021 IN OS 121/2016 BEFORE THE
MUNSIFF'S COURT, VARKALA.
- Exhibit P8 TRUE COPY OF THE OBJECTION SUBMITTED
BY THE POWER OF ATTORNEY HOLDER OF THE
3RD PLAINTIFF IN IA NO.42/2021 IN OS
NO.121/2016 BEFORE MUNSIFF COURT,
VARKALA