

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 10TH DAY OF AUGUST 2023 / 19TH SRAVANA, 1945

OP(C) NO. 1651 OF 2023

AGAINST THE ORDER/JUDGMENT OS 642/2021 OF THE MUNSIF
COURT , NEYYATTINKARA

PETITIONER/PLAINTIFF:

B.K SHYAMALA KUMARI
AGED 65 YEARS
D/O LATE BHARGAVAN NADAR, "DHANYA" KALLAMAM, PANNIYODE
P.O, VEERANAKAVU VILLAGE, THIRUVANANTHAPURAM,
PIN - 695575

BY ADV M.R.SARIN

RESPONDENTS/DEFENDANTS NOS 1 TO 6:

- 1 RAGI RAJENDRAN, AGED 28 YEARS
D/O LATE B.K GIRIJAKUMARI, RAGI NIVAS,
KANNARAVILA,NELLIMODU P.O, KOTTUKAL VILLAGE
THIRUVANANTHAPURAM, PIN - 695524
- 2 B.K JAYAKUMAR
AGED 62 YEARS
S/O LATE BHARGAVAN NADAR, GUBI NIVAS, KANNARAVILA,
NELLIMOODU P.O, THIRUVANANTHAPURAM,, PIN - 695524
- 3 SYAMAJA .B.K
AGED 60 YEARS
D/O LATE BHARGAVAN NADAR, 2/51,KARTHALAKIZHAKKERA
VEEDU,SHANTIPURAM, RUSSELPURAM, THIRUVANANTHAPURAM,,
PIN - 695501
- 4 B.K VINODKUMAR
AGED 57 YEARS
S/O LATE BHARGAVAN NADAR, NEERAVILA HOUSE, KANNARAVILA,
NELLIMOODU P.O, KOTTUKAL VILLAGE, PIN - 695524
- 5 B.K ANANDAKUMAR
AGED 55 YEARS
S/O LATE BHARGAVAN NADAR KRISHNA VILASOM,KANNARAVILA,
NELLIMOODU P.O , KOTTUKAL VILLAGE THIRUVANANTHAPURAM,,

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PIN - 695524

6 B.K VINEETHKUMAR
AGED 53 YEARS
KRISHNA VILASOM, KANNARAVILA, NELLIMOODU P.O ,
KOTTUKAL VILLAGE THIRUVANANTHAPURAM,, PIN - 695524

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
10.08.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Dated this the 10th day of August, 2023

JUDGMENT

The original petition is filed to direct the Court of Munsiff -III, Neyyattinkara to expeditiously dispose of O.S. No.642/2021, within a time period to be fixed by this Court.

2. The petitioner has averred in the original petition that, she has instituted the suit against the respondents for a decree of partition. Although the suit was instituted in September, 2021, the same has not been decided, which in turn is causing prejudice to the petitioner. Hence, the original petition.

3. Heard; Sri. M.R.Sarin, the learned the counsel appearing for the petitioner, on admission.

4. The Code of Civil Procedure, 1908 lays down the procedure to be followed by civil courts right from the

institution of the suit till the execution of the decree.

5. It is trite, the supervisory jurisdiction of this Court under Article 227 of the Constitution of India is to be exercised sparingly and in cases of exceptional rarity. The power under this Article casts a duty on this Court to keep Courts of the District Judicature and Tribunals within their bounds of authority and see that they discharge their functions as per the mandate prescribed under law. But, that does not mean that this Court is to intermeddle with the proceedings before the Courts/Tribunals, at each and every stage, that too on the mere asking of parties, particularly to dispose of a suit in precedence to older pending matters.

6. Ext P1 plaint is seen instituted in September 2021. The averments in the original petition does not show as to whether the respondents have even filed their written statement. Thus, I am of the view that the suit is only at its nascent stage.

7. In **Shiju Joy.A vs. Nisha** [2021 (2) KHC 462], a

Division Bench of this Court has succinctly held that in cases pending before the Family Courts, if a litigant desires to get an out-of-turn disposal, then such person has to first move the Family Court by way of an interlocutory application stating the reasons for the expeditious consideration of the matter. Only if the Family Court rejects such request, the party can invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

8. Recently, another Division Bench of this Court in **Prema Joy vs. John Britto** [2023 LiveLaw (Ker) 235], following the principles in **Shiju Joy** (supra), has emphatically held that 'out-of-turn' hearings cause injustice to other litigants. Deviation from the seniority, on the basis of the date of filing, shall be permitted only in exceptional cases and for genuine reasons. Merely because a litigant has the means or resources to approach this Court, with a prayer to expedite his case, he shall not be permitted to jump the queue or steal a

march over other litigants, and get an undue advantage.

9. On an overall consideration of the pleadings and the principles laid down in the aforecited precedents, I do not find any extra-ordinary circumstances or pressing reasons to exercise the power of superintendence of this Court under Article 227 of the Constitution of India, to direct the court below to expeditiously dispose of the suit in question. There are no justifiable grounds made out in the original petition, to direct the out of turn disposal of the said suit, and upset the apple cart of the suits already listed for trial before the court below, where there is a huge backlog of suits and applications. Hence, this Court leaves it to the absolute discretion and wisdom of the court below to decide, whether the present suit is to be disposed of in precedence to older pending matters. It would be upto the petitioners to move the court below by filing an application, seeking for an out-of-turn disposal of the suit. If such an application is filed, the court below shall consider the same as per the principles laid down in

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Shiju Joy and Prema Joy (supra).

With the above observations, the original petition is dismissed.

SD/-

C.S.DIAS, JUDGE

rmm10/8/2023

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APPENDIX OF OP(C) 1651/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PLAINT IN OS NO.
642/2021 IN THE FILE OF HON'BLE MUNSIFF
COURT-III NEYYANTTINKARA
- Exhibit P2 THE TRUE COPY OF IA 1/2021 IN OS NO.
642/2021 IN THE FILE OF HON'BLE MUNSIFF
COURT-III NEYYANTTINKARA
- Exhibit P3 THE TRUE COPY OF IA 4/2023 IN OS NO.
642/2021 IN THE FILE OF HON'BLE MUNSIFF
COURT-III NEYYANTTINKARA
- Exhibit P4 THE TRUE COPY OF IA 5/2023 IN OS NO.
642/2021 IN THE FILE OF HON'BLE MUNSIFF
COURT-III NEYYANTTINKARA