

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

MONDAY, THE 3RD DAY OF JULY 2023 / 12TH ASHADHA, 1945

OP(C) NO. 1313 OF 2016

(AGAINST THE ORDER IN I.A.No.638/2016 IN OS 292/2013 OF PRINCIPAL
MUNSIFF COURT II ,KOZHIKODE)

PETITIONER/RESPONDENT/SUPPLEMENTAL PLAINTIFF No.2:

SHOLLY LOOKOSE
AGED 53 YEARS
S/O.SASALILOOKOSE, RESIDING AT 9/1128, KARATTUMALAYIL,
ANJAL ARCADE, KODARANGHI VILLAGE, KOZHIKODE TALUK.

BY ADVS.
SRI.SHYAM PADMAN
SRI.C.M.ANDREWS
SMT.BOBY M.SEKHAR
SRI.P.T.MOHANKUMAR

RESPONDENT/PETITIONER/DEFENDANT:

V.I.JOSEPH
AGED 68 YEARS
S/O.IPE, VAYITHARA HOUSE, AMAYANOR KARA, AYAKKUNNAM
VILLAGE, NOW RESIDING AT NCK TOURIST HOME, MAVOOR ROAD,
KASABAAMSOM AND DESOM, P.O.KOZHIKODE - 673 004.

BY ADV SRI.GEORGE ZACHARIAH ERUTHICKEL

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03.07.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR**JUDGMENT**

A strange contention was raised before the trial court regarding the counter claim raised on the death of original plaintiff. The legal heirs of original plaintiff were impleaded as supplementary plaintiffs. Thereon a contention was raised that counter claim will stand abated due to non-impleadment of the legal heirs of the plaintiff as counter claim defendant in the suit. A counter claim can be raised only against the plaintiff in the suit and it is not permissible even to implead any other person in the suit for the purpose of counter claim. Further, the counter claim should always be within the four corners of the suit, both pecuniary and territory and it should be always against the plaintiff, though it can be by one among the defendants or by all the defendants. The counter claim shall be treated as a plaint and governed by the rules applicable to plaints by virtue of sub-

rule (4) of Rule 6A of Order VIII C.P.C.. The said sub-rule has only a restricted meaning and would come into play only on raising a counter claim in a pending suit. Necessarily, the plaintiff/plaintiffs in the suit would stand in the status of a defendant/defendants as against the counter claim, when treated as a plaintiff. When the original plaintiff passed away and legal heirs were brought on record by impleadment as supplementary plaintiffs, they would stand stepped into the shoes of the original plaintiff and necessarily would acquire the character of defendants as against the counter claim raised. Hence, there is no need to implead them once again separately as counter claim defendants. Further, if it is permitted, it will alter the very scope of Rule 6A of Order VIII C.P.C. besides the very concept and the principle behind it. The argument advanced by the petitioners by relying on sub-rule 4 of Rule 6A of Order VIII C.P.C. that they should be impleaded separately as counter claim defendants, otherwise, the counter

claim would stand abated on account of non-impleadment of legal heirs cannot be sustained. Hence, O.P.(C) will stand dismissed accordingly.

Sd/-
P. SOMARAJAN
JUDGE

LEK

APPENDIX OF OP(C) 1313/2016

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PLAINT DATED 25/4/2013
IN OS NO.292/2013.
- Exhibit P2 TRUE COPY OF THE WRITTEN
STATEMENT/COUNTER CLAIM DATED 29/7/2013
IN OS.NO.292/2013.
- Exhibit P3 TRUE COPY OF THE COPY OF THE WRITTEN
STATEMENT TO THE COUNTER CLAIM DATED
2/9/2013 IN OS. NO.292/2013.
- Exhibit P4 TRUE COPY OF THE AFFIDATED IN I.A
NO.638/2016 DATED 6/2/2016 FILED BY THE
RESPONDENT
- Exhibit P5 TRUE COPY OF THE COUNTER STATEMENT IN I.A
NO.638/2016 DATED 10/2/2016 FILED BY THE
RSPONDENT
- Exhibit P6 TRUE COPY OF THE ORDER DATED 12/2/2016 IN
I.A NO.638/2016 OF THE MUNSIFF COURT II
KOZHIKODE.