

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 19<sup>TH</sup> DAY OF JULY 2022 / 28<sup>TH</sup> ASHADHA, 1944

RP NO. 524 OF 2022

AGAINST THE JUDGMENT DATED 24.05.2022 IN OP(C)NO.719/2022

OF HIGH COURT OF KERALA, ERNAKULAM

PETITIONERS/RESPONDENTS 1 TO 12 IN OP(C) :

- 1 N.VANAJA @ VANAJA NAGENDRAN  
AGED 67 YEARS  
W/O. LATE V. NAGENDRAN, SREE LAKSHMI NIVAS,  
VAIKOM ROAD, OPP. TO BOYS HIGH SCHOOL,  
TRIPUNITHURA, ERNAKULAM, PIN 682 301,  
REP. BY POWER OF ATTORNEY HOLDER NAGENDRA  
SREENIVASAN @ N.SREENIVASAN,  
S/O. NAGENDRAN, AGED 46 YEARS,  
SREE LAKSHMI NIVAS,  
VAIKOM ROAD, OPP. TO BOYS HIGH SCHOOL,  
TRIPUNITHURA, ERNAKULAM, PIN - 682301
- 2 SAKTHIVEL HEMA  
AGED 42 YEARS  
W/O. SAKTHIVEL AND D/O. LATE NAGENDRAN,  
4325 VERIDGRIS CIRCLE, SAN JOSE,  
CA-95134, USA, FROM SREE LAKSHMI NIVAS,  
VAIKOM ROAD, OPP. TO BOYS HIGH SCHOOL,  
TRIPUNITHURA, ERNAKULAM, PIN 682 301,  
REP. BY POWER OF ATTORNEY HOLDER NAGENDRA  
SREENIVASAN @ N. SREENIVASAN,  
S/O. LATE NAGENDRAN, AGED 42 YEARS,  
SREE LAKSHMI NIVAS, VAIKOM ROAD,  
OPP. TO BOYS HIGH SCHOOL, TRIPUNITHURA,  
ERNAKULAM, PIN - 682301
- 3 NAGENDRA SREENIVASAN @ N. SREENIVASAN,  
AGED 46 YEARS  
S/O. LATE NAGENDRAN,  
SREE LAKSHMI NIVAS, VAIKOM ROAD,  
OPP. TO BOYS HIGH SCHOOL, TRIPUNITHURA,  
ERNAKULAM, PIN - 682301

- 4        RADHAKRISHNAN  
          AGED 86 YEARS  
          S/O. LATE P.S.S. VARADARAJA NADAR,  
          KALARIKKALPARAMBIL, OPP.AYURVEDA COLLEGE,  
          NADAMA VILLAGE, KANAYANNUR TALUK, PIN 682 301,  
          REP. BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
          AGED 72 YEARS, S/O. LATE P.S.S. VARADARAJA  
          NADAR, KALARIKKALPARAMBIL,  
          OPP. AYURVEDA COLLEGE, NADAMA VILLAGE,  
          KANAYANNUR TALUK, PIN - 682301
  
- 5        RAMAGOPAL  
          AGED 78 YEARS  
          S/O. LATE P.S.S. VARADARAJA NADAR,  
          KALARIKKALPARAMBIL, OPP. AYURVEDA COLLEGE,  
          NADAMA VILLAGE, KANAYANNUR TALUK,  
          REP BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
          S/O. LATE P.S.S. VARADARAJA NADAR,  
          KALARIKKALPARAMBIL, OPP.AYURVEDA COLLEGE,  
          NADAMA VILLAGE, KANAYANNUR TALUK,  
          PIN - 682301
  
- 6        SANTHARAM  
          AGED 74 YEARS  
          S/O. LATE P.S.S. VARADARAJA NADAR,  
          KALARIKKALPARAMBIL,  
          OPP AYURVEDA COLLEGE, NADAMA VILLAGE,  
          KANAYANNUR TALUK,  
          REP BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
          S/O. P.S.S. VARADARAJA NADAR,  
          KALARIKKALPARAMBIL,  
          OPP AYURVEDA COLLEGE, NADAMA VILLAGE,  
          KANAYANNUR TALUK, PIN - 682301
  
- 7        DHANAPALAN  
          AGED 72 YEARS  
          S/O. LATE P.S.S. VARADARAJA NADAR,  
          KALARIKKALPARAMBIL,  
          OPP AYURVEDA COLLEGE,  
          NADAMA VILLAGE,  
          KANAYANNUR TALUK,  
          PIN - 682301

- 8       **PREMA**  
AGED 70 YEARS  
D/O. LATE P.S.S. VARADARAJA NADAR,  
KALARIKKALPARAMBIL,  
OPP AYURVEDA COLLEGE, NADAMA VILLAGE,  
KANAYANNUR TALUK, PIN 682 301,  
REP. BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
AGED 72 YEARS, S/O. LATE P.S.S. VARADARAJA  
NADAR, KALARIKKALPARAMBIL, OPP. AYURVEDA  
COLLEGE, NADAMA VILLAGE,  
KANAYANNUR TALUK, PIN - 682301
- 9       **BHAVANI**  
AGED 68 YEARS  
D/O. LATE P.S.S. VARADARAJA NADAR,  
KALARIKKALPARAMBIL, OPP AYURVEDA COLLEGE,  
NADAMA VILLAGE, KANAYANNUR TALUK, PIN 682 301,  
REP BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
AGED 72 YEARS, S/O. LATE P.S.S. VARADARAJA  
NADAR, KALARIKKALPARAMBIL, OPP AYURVEDA  
COLLEGE, NADAMA VILLAGE,  
KANAYANNUR TALUK, PIN - 682301
- 10       **VIJAYALAKSHMI**  
AGED 64 YEARS  
D/O. LATE P.S.S. VARADARAJA NADAR,  
KALARIKKALPARAMBIL,  
OPP AYURVEDA COLLEGE, NADAMA VILLAGE,  
KANAYANNUR TALUK, PIN 682 301,  
REP BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
AGED 72 YEARS, S/O. LATE P.S.S. VARADARAJA  
NADAR, KALARIKKALPARAMBIL,  
OPP AYURVEDA COLLEGE, NADAMA VILLAGE,  
KANAYANNUR TALUK, PIN - 682301
- 11       **SELVALAKSHMI**  
AGED 62 YEARS  
D/O. LATE P.S.S. VARADARAJA NADAR,  
KALARIKKALPARAMBIL, OPP AYURVEDA COLLEGE,  
NADAMA VILLAGE, KANAYANNUR TALUK, PIN 682 301,  
REP BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
AGED 72 YEARS, S/O. LATE P.S.S. VARADARAJA  
NADAR, KALARIKKALPARAMBIL,

OPP AYURVEDA COLLEGE, NADAMA VILLAGE,  
KANAYANNUR TALUK, PIN - 682301

12 UMADEVI  
AGED 60 YEARS  
D/O. LATE P.S.S. VARADARAJA NADAR,  
KALARIKKALPARAMBIL,  
OPP AYURVEDA COLLEGE, NADAMA VILLAGE,  
KANAYANNUR TALUK, PIN 682 301,  
REP BY POWER OF ATTORNEY HOLDER DHANAPALAN,  
AGED 72 YEARS, S/O. LATE P.S.S. VARADARAJA  
NADAR, KALARIKKALPARAMBIL,  
OPP AYURVEDA COLLEGE,  
NADAMA VILLAGE, KANAYANNUR TALUK,  
PIN - 682301

BY ADVS.  
M.P.RAMNATH  
P.RAJESH (KOTTAKKAL)  
K.J.SEBASTIAN  
M.VARGHESE VARGHESE  
UMA R.KAMATH  
S.SANDHYA  
BEPIN PAUL  
SHALU VARGHESE  
S.DEEPAK  
ANTONY THARIAN  
K.S AKSHAY MOHAN  
GENTLE C.D.

RESPONDENTS/PETITIONERS 1 TO 6 & RESPONDENTS 13 & 14 IN

OP (C) :

1 BHANUMATHY  
AGED 85 YEARS  
W/O. GOVINDAN,  
KIZHAKEDATH MADATHUM MURIYIL,  
EROOR NORTH P.O., TRIPUNITHURA,  
ERNAKULAM,  
PIN - 682306

- 2      RAJAMMA  
         AGED 73 YEARS  
         W/O. MADHAVAN,  
         KIZHAKEDATH MADATHUM MURIYIL,  
         EROOR NORTH P.O., TRIPUNITHURA,  
         ERNAKULAM, PIN - 682306
  
- 3      MALLIKA  
         AGED 52 YEARS  
         W/O. CHANDRAN,  
         KIZHAKEDATH MADATHUM MURIYIL,  
         EROOR NORTH P.O., TRIPUNITHURA,  
         ERNAKULAM, PIN - 682306
  
- 4      PRADEESH CHANDRAN  
         AGED 29 YEARS  
         S/O. CHANDRAN,  
         KIZHAKEDATH MADATHUM MURIYIL,  
         EROOR NORTH P.O.,  
         TRIPUNITHURA,  
         ERNAKULAM, PIN - 682306
  
- 5      SUDHEESH CHANDRAN  
         AGED 27 YEARS  
         S/O. CHANDRAN,  
         KIZHAKEDATH MADATHUM MURIYIL,  
         EROOR NORTH P.O.,  
         TRIPUNITHURA,  
         ERNAKULAM, PIN - 682306
  
- 6      SHARANYA VIJESH  
         AGED 23 YEARS  
         W/O. VIJESH KUMAR,  
         KIZHAKEDATH MADATHUM MURIYIL,  
         EROOR NORTH P.O., TRIPUNITHURA,  
         ERNAKULAM, PIN - 682306
  
- 7      SANTHAMMA  
         AGED 81 YEARS  
         W/O. P.K. KRISHNANKUTTY,  
         KIZHAKEDATH MADATHUM MURIYIL,  
         EROOR NORTH P.O.,  
         TRIPUNITHURA, ERNAKULAM.

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8        **MANI**  
          **AGED 71 YEARS**  
          **W/O. RAMADAS,**  
          **KIZHAKEDATH MADATHUM MURIYIL,**  
          **EROOR NORTH P.O., TRIPUNITHURA,**  
          **ERNAKULAM, PIN - 682306**  
  
          **BY ADV.SRI.K.C.CHARLES**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON**  
**04.07.2022, THE COURT ON 19.07.2022 DELIVERED THE**  
**FOLLOWING:**

**"C.R."**

**A.BADHARUDEEN, J.**

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**IN**

**O.P.(C)No.719 of 2022**  
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**Dated this the 19<sup>th</sup> day of July, 2022**

**ORDER**

Respondents 1 to 12 in the original petition are the review petitioners. Respondents in this review petition are original petitioners 1 to 6 and respondents 13 and 14.

2. Heard Adv.Sri.M.P.Ramnath, the learned counsel for the review petitioners and Adv.Smt.A.T.Renju, the learned counsel for the respondents.

3. It is submitted by the learned counsel for the review petitioners that the original petition filed by the respondents 1 to 6 herein to direct the 2<sup>nd</sup> Additional

Munsiff's Court, Ernakulam to examine the petitioners witness in Ext.P1 suit within a period of one month was allowed by this Court with direction to the learned 2<sup>nd</sup> Additional Munsiff to complete the examination of PW1, within a period of three weeks from the date of production of a copy of the judgment or on receipt of the same.

4. The main grounds raised to review the judgment dated 24.05.2022 as could be read out from the review petition are as under;

1. There is error apparent on the face of record.
2. The recording made by this Hon'ble Court in para-3 of the present judgment dt.24.05.2022 in this OP(C) that, "Though notice served to respondents 1 to 12 by serving copy of this petition to Adv.M.P.Ramanath, nobody appeared" is erroneous and caused to be made by this Hon'ble Court by misleading this Hon'ble Court when in fact no valid memo even was served on the counsel for the respondents 1 to 12 in the OP(C) (who are the contesting defendants before the court below).



3. There is an error apparent on the face of record which has also resulted in this Hon'ble Court passing the current impugned judgment, which requires necessary review.

4. There has been no memo served upon "Adv.M.P.Ramnath" - the counsel for the review petitioners herein, who are the defendants in the suit before the court below intimating that this Hon'ble Court has by any order in this OP(C) directed service of notice to the respondents 1 to 12 in the OP(C)/defendants in the suit through counsel appearing before the court below or that this OP(C) is posted before the bench for appearance of respondents 1 to 12 therein on 24.05.2022 or any other date.

5. Adv.Sri.M.P.Ramnath, the learned counsel for the review petitioners reiterated the grounds as stated above on asserting that he did not receive notice for and on behalf of respondents 1 to 12. It is surprising to notice that the learned counsel appearing for respondents 1 to 6 herein/the original petitioners would also concede that no notice served upon Adv.M.P.Ramnath and she made apology

in this regard. In fact, a memo, which was filed on 23.05.2022 in this matter by Adv.Sri.Vimal K. Charles, is appended in the paper book showing that copy of the original petition was served upon Adv.Sri.M.P.Ramnath, the learned counsel for respondents 1 to 12, and Adv.Sri.M.P.Ramnath put signature therein. Since Adv.Sri.M.P.Ramnath denied receipt of copy as per memo dated 23.05.2022 produced, the other side also conceded that no notice was served, without much ado, it is established that a false document is produced before this Court and the impugned judgment was obtained by respondents 1 to 6 in this matter. To be precise, judgment dated 24.05.2022 was obtained on producing a fake memo showing service of notice to Adv.Sri.M.P.Ramnath for and on behalf of respondents 1 to 12, by playing fraud on Court.

6. It is the settled law that once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order

cannot be held legal, valid or in consonance with law. It is non existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior. The decision of the Apex Court reported in [2007 KHC 3240], **A.V.Papayya Sastry and Others v. Government of A.P. and Others** on this point.

7. Since the judgment in this matter was obtained by respondents 1 to 6 by producing a fake memo showing service of notice to Adv.M.P.Ramnath, I am inclined to impose reasonable cost on respondents 1 to 6/original petitioners. Respondents 1 to 6 herein/the original petitioners are directed to deposit Rs.10,000/-(Rupees Ten Thousand only) before the Kerala State Legal Services Authority(KELSA) within fifteen days from today and

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produce the receipt for the same before this Court. Action, if any, against the person who had produced a fake memo, shall be decided later.

In the result, this review petition stands allowed. Judgment dated 24.05.2022 stands set aside and the original petition stands restored to file, with liberty to the review petitioners to file objection, if any, within two weeks.

Post for hearing the original petition on merits along with receipt showing remittance of cost ordered herein above before this Court on 10.08.2022.

Sd/-

**A.BADHARUDEEN, JUDGE**

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