

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

Ex.SA.No. 8 of 2015 ()

AGAINST THE JUDGMENT IN AS 80/2011 of SUB COURT, PAYYANNUR DATED 18-2-15.

**AGAINST THE ORDER IN E.A NO.151/2010 IN E.P NO.26/2005 IN R.C.P NO.8/2003 ON
THE FILE of the MUNSIFF COURT, TALIPARAMBA.**

APPELLANT/APPELLANT/CLAIM PETITIONER :

**C. MAHESAN, S/O K.C.GOPALAN, AGED 52 YEARS,
GOKULAM, KOLACHERRY POST, KOLACHERRY AMSOM,
KANNUR DISTRICT.**

BY ADV. SRI.P.BABU.

RESPONDENTS/RESPONDENTS/RESPONDENTS :

- 1. PANIKKARAKATH PARAKADAVATH AYISHA,
W/O KHADHARUKUTTY, AGED 71 YEARS,
TALIPARAMBA AMSOM, THRICAMBALAM DESOM,
THALIPARAMBA TALUK - 670 141.**
- 2. MUSTHAF, AGED 53 YEARS, S/O KHADHARKUTTY,
PUSHPAGIRI, KUTTIYERI AMSOM, TALIPARAMBA - 670 141.**
- 3. KHADHEEJA, AGED 50 YEARS, D/O KHADHARKUTTY,
PUSHPAGIRI, KUTTIYERI AMSOM, TALIPARAMBA - 670 141.**
- 4. ABDUL RAHIMAN, AGED 46 YEARS, S/O KHADHARKUTTY,
KAKKANCHAL, TALIPARAMBA AMSOM,
THRICAMBALAM DESOM - 670 141.**
- 5. SHAHINA, AGED 44 YEARS, D/O KHADHARKUTTY,
TALIPARAMBA AMSOM, THRICAMBALAM DESOM - 670 141.**
- 6. SHAMSUDHEEN, S/O KHADHARKUTTY, AGED 41 YEARS,
THALIPARAMBA AMSOM, THRICAMBALAM DESOM,
TALIPARAMBA - 670 141.**
- 7. SHAJUDDEEN, S/O KHADHARKUTTY, AGED 37 YEARS,
TALIPARAMBA AMSOM, THRICAMBALAM DESOM,
TALIPARAMBA - 670 141.**

8. SAUDABI, AGED 35 YEARS, D/O KHADHARKUTTY, THALIPARAMBA AMSOM, THRICAMBALAM DESOM, THALIPARAMBA - 670 141.
9. ABDUL SAMMAD, S/O KHADHARKUTTY, AGED 32 YEARS, THALIPARAMBA AMSOM, THRICAMBALAM DESOM, THALIPARAMBA - 670 141.
10. SHABEER, S/O KHADHARKUTTY, AGED 29 YEARS, THALIPARAMBA AMSOM, THRICAMBALAM DESOM, THALIPARAMBA - 670 141.
11. C.RAMESHAN, S/O K.S.GOPALAN, AGED 50 YEARS, GOKULAM POST, KOLACHERRY, KOLACHERRY AMSOM, KANNUR DISTRICT - 670 141.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

THIS EXECUTION SECOND APPEAL HAVING COME UP FOR ADMISSION ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

amk

A.HARIPRASAD, J.

Ex.S.A No.8 of 2015

Dated this the 6th day of April, 2015.

J U D G M E N T

Appellant filed an application before the executing court under Order 21 Rule 58 C.P.C, which was dismissed by the executing court. The matter was taken up in appeal before the lower appellate court. The appellate court also found that the application is not maintainable. Hence this execution second appeal.

2. Heard the learned counsel for the appellant and the learned counsel for the respondents 1 to 11, who are the decree holders before the executing court.

3. Brief facts, are as follows :

The appellant and his brother in partnership took a building belonging to the decree holders and others on lease for running a photo studio. Ext.A1 is the kychit produced at the trial stage. Thereafter, the partnership was dissolved and the studio became the sole proprietary concern of the appellant.

Subsequently, the four co-owners partitioned the property and the building in question was allotted to the predecessor in interest of the decree holders. They filed a rent control petition for eviction of appellant's brother from the building without impleading the appellant as a respondent in the proceedings. It is the contention of the appellant that an order was obtained behind his back and now it is sought to be executed. At that juncture, he filed the application under Order 21 Rule 58 C.P.C. It goes without saying that in such a situation the remedy of the appellant is certainly not to move the execution court with an application under Order 21 Rule 58 C.P.C. Therefore, the courts below rightly found that the action initiated by the appellant was legally unsustainable and hence dismissed the same. Learned counsel for the appellant apprehends that the decree holders immediately on getting possession of the building are likely to demolish it. If that happens, the appellant contends, virtually he

will be deprived of his legal right to resist the action of the decree holders. I am afraid, the appellant is not without any remedy, as it is provided by the Code itself. Therefore, I am of the view that the appeal is devoid of any substantial question of law and it is not maintainable.

In the result, the execution second appeal is dismissed.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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P.A to Judge