

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

FAO.No. 107 of 2008 ()

**AGAINST THE ORDER IN OP (INDIGENT)12/2005 OF SUB COURT, THIRUVALLA
DATED 07-02-2008**

APPELLANT/PETITIONER-PLAINTIFF::

**A.V.VARGHESE, S/O.VARUGHESE,
THEKKEMMANNIL HOUSE, VARGHESE HOUSE, VARAYANNUR MURI
KOIPURAM VILLAGE, THIRUVALLA TALUK
PATHANAMTHITTA DISTRICT NOW RESIDING AT
PALATHANATH HOUSE, KURUNGAZHA P.O., PULLAD
KOIPURAM P.O. THIRUVALLA TALUK
PATHANAMTHITTA DISTRICT**

**BY ADVS. SRI.ABRAHAM SAMSON
SMT. LOVELY SAMSON**

RESPONDENT/RESPONDENT-DEFENDANT::

**PRINCE MATHEW, AGED 35 YEARS,
PUTHUPARAMPIL HOUSE, MUTHOOR MURI, MUTHOOR P.O.
THIRUVALLA VILLAGE, PATHANAMTHITTA DISTRICT.**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE A : COPY OF THE AFFIDAVIT DATED 6.1.2007 FILED BY THE PETITIONER BEFORE THE SUB COURT, THIRUVALLA

ANNEXURE B: COPY OF THE AGREEMENT DATED 6.7.2002 REGARDING THE SALE OF THE VEHICLE

ANNEXURE C: COPY OF THE RECEIPT OF ACKNOWLEDGMENT OF MONEY DATED 10.11.2002

ANNEXURE D: COPY OF THE PASSBOOK OF THE PETITIONER WITH ACCOUNT NO.CL995 OF THIRUVALLA EAST CO-OPERATIVE BANK

ANNEXURE E: COPY OF THE PASSBOOK OF THE PETITIONER WITH ACCOUNT NO.1186 OF THIRUVALLA EAST CO-OPERATIVE BANK

ANNEXURE F: COPY OF THE SALE DEED NO.1453/2006 DATED 3.10.2006

ANNEXURE G: COPY OF THE SALE DEED NO.1454/2006 DATED 3.10.2006

ANNEXURE H: COPY OF THE AGREEMENT DATED 8.10.2002 EVIDENCING THE RECEIPT OF MONEY

ANNEXURE I: COPY OF THE RENT DEED DATED 15.9.2006 BETWEEN THE PETITIONER AND THE JOHN CHERIYAN

ANNEXURE J: COPY OF THE RENT DEED DATED 16.8.2007 BETWEEN THE PETITIONER AND JOHN CHERIYAN

ANNEXURE K: COPY OF THE ACKNOWLEDGMNET ISSUED BY THE DISTRICT INDUSTRIES CENTER, PATHANAMTHITTA DATED 1.8.2007.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A. TO JUDGE

shg/-

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

F.A.O.No.107 of 2008

Dated this the 26th day of May, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the order dated 7.2.2008 in O.P.(Indigent) No.12/2005 on the file of the Sub Court, Thiruvalla. The case in a nutshell is that the appellant/plaintiff filed the suit for realization of money allegedly paid by him to the respondent/defendant and the defendant owed Rs.4,57,500/-. The court below declined to grant permission and the petition dismissed. Aggrieved by the said order, this appeal filed.

2. When the appeal came up for hearing, the main submission made before us is that the appellant got documents to substantiate his case. The appellant filed I.A.1705/2008 wherein documents Annexure A to Annexure K are produced.

3. The above documents are produced to show that the appellant herein sold properties and the consideration

got therein was actually utilised to discharge other liabilities and there is no sufficient realisable amount in the hands. After hearing the submission and going through the documents and also perusing the impugned order, we feel that it will be only just and proper to give a further opportunity to the appellant to adduce evidence in the I.A.

4. Hence the impugned order is hereby set aside and the court below is directed to decide the above I.A. afresh. The appellant is at liberty to produce original documents before the court below, of which, the photostat copies are produced herein. Parties are also entitled to give further oral evidence. Untrammelled by any of the observations made herein, the court below can dispose the above matter.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/