

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

OP(C).No. 2 of 2015 (O)

EP.100/2012 IN OS 761/2004 of PRINCIPAL .MUNSIFF COURT, NEDUMANGAD

PETITIONER:

**SHIBU, AGED 39 YEARS
S/O. ABOOBACKER KUNJU, RESIDING AT KANNATHU MANZIL,
ETTURUTHI MURI, KULATHUMMAL VILLAGE,
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM-695572.**

**BY ADVS.SRI.M.RAMASWAMY PILLAI
SMT.PREETHY R. NAIR**

RESPONDENT:

**BEENA, AGED 45 YEARS
D/O. SHEHARBAN BEEVI, RESIDING AT THZHAVILA VEEDU
KILLI, KOLLODU, KULATHUMMAL VILLAGE
NEYYATTINKARA TALUK,
TRIVANDRUM DISTRICT-695121.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1- THE PHOTOCOPY OF THE PLAINT IN O.S.NO. 761 OF 2004 OF THE MUNSIFF'S COURT, NEDUMANGAD.
- EXHIBIT P2- THE PHOTOCOPY OF THE WRITTEN STATEMENT DATED 28-6-2005 FILED BY DEFENDANT IN OS.NO. 761 OF 2004 OF THE MUNSIFF'S COURT, NEDUMANGAD.
- EXHIBIT P3- THE PHOTOCOPY OF THE WRITTEN STATEMENT WITH COUNTER CLAIM FILED BY THE DEFENDANTS 1 & 3 IN OS. NO. 661 OF 2004 OF THE MUNSIFF'S COURT, NEDUMANGAD.
- EXHIBIT P4- THE PHOTOCOPY OF THE COMMON ORDER IN OS.NOS. 661 & 761 OF 2004 OF THE MUNSIFF'S COURT, NEDUMANGAD.
- EXHIBIT P5- THE PHOTOCOPY OF THE DECREE DATED 19-1-2007 IN O.S.NO. 761/2004 ALONG WITH THE PLAN SUBMITTED BY THE COMMISSIONER.
- EXHIBIT P6- PHOTOCOPY OF THE ORDER PASSED IN I.A. 790 OF 2007 IN OS.NO. 661/2004 AND I.A. 791 OF 2007 IN O.S.NO. 761/2004 DATED 24TH MARCH 2007.
- EXHIBIT P7- TRUE COPY OF COMPROMISE PETITION IN C.M.A. 16 OF 2007 DATED 11-07-2008.
- EXHIBIT P8- TRUE COPY OF JUDGMENT DATED 16TH DAY OF JULY 2007 IN C.M.A. 16/2007 OF THE SUB JUDGE, NEDUMANGAD.
- EXHIBIT P9- PHOTOCOPY OF EXECUTION PETITION NO. 100 OF 2012 IN O.S.NO. 761/2004 BY INVOKING ORDER 21 RULE 11 C.P.C.
- EXHIBIT P10- PHOTO COPY OF THE OBJECTION DATED 05-01-2013 IN O.S.NO. 761/2004.
- EXHIBIT P11- PHOTOCOPY OF THE APPLICATION DATED 10-10-2013 IN E.P. 100/12 IN O.S. 761/04 FOR APPOINTING ADVOCATE COMMISSIONER.
- EXHIBIT P12- PHOTOCOPY OF THE REPORT AND PLAN DATED 21-11-2013.
- EXHIBIT P13- PHOTOCOPY OR ORDER DATED 25TH OCTOBER, 2014 IN E.P.NO. 100/2012 IN OS. 761/2004 OF THE PRINCIPAL MUNSIFF, NEDUMANGAD.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

P.BHAVADASAN, J.

O.P.(C) No. 2 of 2015

Dated this the 09th day of January, 2015

J U D G M E N T

Strange are the ways of parties in dealing with the case.

2. A suit was instituted as O.S.No. 761/2004 wherein the petitioner herein was the plaintiff and the respondent was the defendant. This Court is given to understand that the suit was decreed. However, while the suit was pending, it would appear from the records that there was an order in an interlocutory application which was challenged by the respondent herein and it was pending as C.M.A.No. 16/2007. It is interesting to note that the suit was decreed on 19.01.2007. However the C.M.A. was disposed of on 16.07.2008. It escapes once understanding that after the suit has been decreed, how the C.M.A. could survive for consideration. But whatever that be, parties chose to enter into a compromise in the C.M.A. and as per the compromise

entered into, C.M.A. was disposed of. Thereafter complaining of violation of the decree in the suit, decree holder sought execution against judgment debtor. The court below found that the decree cannot survive in view of the compromise entered into between the parties and noticed that the appellate court while disposing of the C.M.A. had recorded the compromise. The court below therefore held that the remedy of the petitioner is to enforce the terms of the compromise, on the basis of which C.M.A. was disposed of.

3. The learned counsel appearing for the petitioner contended that the court below was not justified in dismissing his petition as he is entitled to execute the decree.

4. As already stated, when the suit was disposed of earlier, one fails to understand how C.M.A. could survive as it is trite that with the dismissal of the suit, the interlocutory orders cease to exist.

5. Best known to the wisdom of the parties, they chose to enter into a compromise after the decree was passed and then they represented before the appellate court where the C.M.A. was pending that they entered into a compromise and the matter may be disposed of. It was so done.

6. The court below was therefore justified in its view that the decree as such does not exist in view of the compromise entered into between the parties based on which the C.M.A. was disposed of and went on to hold that the remedy, if any available to the petitioner, is to seek enforcement of the compromise entered into between the parties.

7. The above view of the court below appears to be correct and there is no ground to interfere with the said order.

This petition is devoid of merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge