

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

OP(C).No. 44 of 2015 (O)

I.A.NO.1210 OF 2014 IN A.S.NO.85/2014 OF SUB COURT, PERUMBAVOOR

PETITIONER(S)/PETITIONER/APPELLANT :

**SUKUMARAN KARTHA, AGED 70 YEARS,
S/O.BHAVANIKUNJAMMA, CHATHININGATTU PUTHEN BHAVANAM,
VELOOR KARA, PUTHENCROUZ VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.M.R.ARUNKUMAR
SRI.P.SHAMMI NAVAS**

RESPONDENT(S)/RESPONDENT/RESPONDENT :

**THANKAMANI ANTHARJANAM,
AGED 60 YEARS, W/O.SUKUMARAN KARTHA,
CHATHININGATTU PUTHEN BHAVANAM, VELOOR KARA,
PUTHENCROUZ VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM- 682 308.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: COPY OF THE PLAINT IN O.S.NO.154 OF 2013 OF THE MUNSIFF'S COURT, PERUMBAVOOR.**
- EXHIBIT P2: COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT IN O.S.NO.154 OF 2013 OF THE MUNSIFF'S COURT, PERUMBAVOOR DATED 01.09.2013.**
- EXHIBIT P3: COPY OF THE DEPOSITION AND OF PW1 WITH AFFIDAVIT IN O.S.NO.154 OF 2013 OF THE MUNSIFF'S COURT, PERUMBAVOOR.**
- EXHIBIT P4: COPY OF THE DEPOSITION OF DW1 WITH AFFIDAVIT OF THE MUNSIFF'S COURT, PERUMBAVOOR.**
- EXHIBIT P5: COPY OF THE JUDGMENT IN O.S.NO.154 OF 2013 PASSED BY THE MUNSIFF'S COURT, PERUMBAVOOR DATED 31.07.2014.**
- EXHIBIT P6: COPY OF THE MEMORANDUM OF APPEAL IN A.S.NO.85 OF 2014 OF THE SUB COURT, PERUMBAVOOR.**
- EXHIBIT P7: COPY OF THE PETITION I.A.NO.1209 OF 2014 IN A.S.NO.85 OF 2014 OF THE SUB COURT, PERUMBAVOOR.**
- EXHIBIT P8: COPY OF THE PETITION I.A.NO.1210 OF 2014 IN A.S.NO.85 OF 2014 OF SUB COURT, PERUMBAVOOR.**
- EXHIBIT P9: COPY OF THE COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER IN E.P.NO.63 OF 2014 IN O.S.NO.154 OF 2013 BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR DATED 27.10.2014.**
- EXHIBIT P10: COPY OF THE OBJECTION FILED BY THE JUDGMENT DEBTOR/PETITIONER HEREIN IN E.P.NO.63 OF 2014 IN O.S.NO.154 OF 2013 BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR DATED 27.10.2014.**
- EXHIBIT P11: COPY OF THE ORDER PASSED BY THE SUB COURT, PERUMBAVOOR IN I.A.NO.1210 OF 2014 IN A.S.NO.85 OF 2014 DATED 25.11.2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

P. BHAVADASAN, J.

O.P.(C). No. 44 of 2015

Dated this the 8th day of January, 2015.

JUDGMENT

Under challenge is Ext.P11 order whereby the court below dismissed the stay application filed along with the appeal before the Sub Court, Perumbavoor.

2. The petitioner was the defendant in O.S. 154 of 2013 on the file of Munsiff's Court, Perumbavoor. Though the plaintiff in the suit claimed to be the wife of the defendant, who is the petitioner herein, the petitioner disputed the existence of a legal marriage and from a reading of the judgment it is seen that he is married to another lady.

3. He executed Ext.A1 settlement deed in respect of the plaint schedule property in favour of the plaintiff in the suit. Six years thereafter he cancelled the deed. Assailing the cancellation deed the suit was filed by the plaintiff. On merits, the trial court found that the settlement deed executed as per

Ext. A1 has been accepted and acted upon and therefore the cancellation deed is not valid. Considering the nature of the allegations and the contentions, the trial court decreed the suit and found that the cancellation deed is not legal.

4. The defeated defendant took up the matter in appeal as A.S. 85 of 2014. He moved I.A. 1210 of 2014 for stay of operation of the decree passed by the trial court and execution proceedings thereon. The lower appellate court by a well considered order thought it improper to grant a stay and dismissed the petition.

5. Learned counsel for the petitioner contended that the court below was not justified in dismissing the application for stay especially in view of the fact that the appeal is pending against the judgment and decree of the trial court. It is also contended that an opportunity ought to have been given to the petitioner to substantiate his case and it would be imprudent to let the decree to be executed in the

meanwhile. It is also pointed out that the finding of the court below that the petitioner is residing elsewhere is not correct in view of the fact that the address shown in the plaint is the same as that of the plaintiff. In fact, according to learned counsel, the petitioner is sharing the house along with the respondent in this petition. If the decree is allowed to be executed while the appeal is pending, the petitioner would be thrown to streets and that would have severe consequences. It is therefore contended that taking note of the various aspects the court below ought to have stayed the operation of the decree.

6. Though the above contention may look attractive, on a close scrutiny of the finding of the court below, it can be seen that the petitioner does not deserve any sympathy. Not only that he had a marital relationship with the respondent herein during the subsistence of another marriage, at the time of suit, he disputed that there was legal

marriage between him and the plaintiff. He had no case that Ext.A1 was not executed by him and the reason given for executing the cancellation deed was that the plaintiff has not complied with the conditions agreed to at the time of execution of Ext.A1. The trial court found that that is not a ground to cancel Ext.A1 document.

7. It is true that normally, being a first appeal, the court will be inclined to grant stay of operation of the decree. But it is not an invariable rule. In the case on hand, the court below considered all the aspects in detail and came to the conclusion that it is not just and proper in the interests of justice to grant stay of operation of the decree so as to forestall the execution proceedings. After having gone through the judgment of the court below, this Court finds no grounds to interfere with Ext.P11 order.

This Original Petition is without merits and it is accordingly dismissed. However, there will be a direction to

the Sub Court, Perumbavoor to take up A.S. 85 of 2014 and dispose of the same as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this judgment.

P. BHAVADASAN,
JUDGE

sb.