

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

OP(C).No. 83 of 2015 (O)

OS.NO. 2346/2012 OF PRINCIPAL SUB COURT,THRISSUR
.....

PETITIONER(S):

**BUSHARA, AGED 44,
W/O.CHERUVAYIL ABDULRAHMAN, VIRUPAKA VILLAGE,
TALAPPILLY TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

**MANOJ,
S/O.GOPI, KADAMBAT HOUSE, ENKAKAD VILLAGE,
TALAPPILLY TALUK, THRISSUR DISTRICT-680 001.**

**BY ADVS. SRI.S.DILEEP
SRI.GEORGEKUTTY MATHEW**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 83 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE COPY OF THE IA.NO. 7017 OF 2014 IN OS. NO.2346 OF 2012
DATED 04.12.2014 ON THE FILE OF THE SUB COURT, THRISSUR.**

**EXHIBIT P2: A TRUE COPY OF THE ORDER PASSED IN IA.NO.7017 OF 2014 IN
OS NO.2346 OF 2012 DATED 16.12.2014 ON THE FILE OF THE SUB COURT,
THRISSUR.**

**EXHIBIT P3: A TRUE COPY OF THE SALE DEED BEARING NO.4804 OF 2014
DATED 19.12.2014 OF THE WADAKKANCHERY SRO.**

**EXHIBIT P4: A TRUE COPY OF THE IA NO.7314 OF 2014 IN IA NO.7017 OF 2014 IN
OS NO.2346 OF 2012 DATED 20.12.2014 BEFORE THE PRL.SUB COURT,
THRISSUR.**

**EXHIBIT P5: A TRUE COPY OF THE ORDER PASSED IN IA. NO.7314 OF 2014 IN
IA NO.7017 OF 2014 IN OS. NO.2346 OF 2012 DATED 20.12.2014 BEFORE
PRL. SUB COURT, THRISSUR.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv**/**

P. BHAVADASAN, J.

O.P.(C). No. 83 of 2015

Dated this the 16th day of January, 2015.

JUDGMENT

Under challenge is Ext.P5 order dated 20.12.2014 in I.A. 7314 of 2014 in I.A. 7017 of 2014 in O.S. 2346 of 2012 before Sub Court, Thrissur.

2. The petitioner was the defendant in O.S. 2346 of 2012 which was a suit laid by the respondent herein based on a promissory note said to have been executed by the petitioner in his favour. Along with the suit, the plaintiff produced the original title deed belonging to the defendant in the suit who is the petitioner herein.

3. It is not in dispute that the petitioner offered security for the decree amount in the form of Fixed Deposit Receipt and prayed that the title deed may be returned to her. She moved I.A. 7017 of 2014 for the said purpose. The matter was heard and the Fixed Deposit Receipt was accepted and the document was directed to be returned.

The document was returned without any conditions.

4. Learned counsel for the petitioner pointed out that after the document was returned, the property was sold to a stranger and Ext.P3 is the sale deed. Learned counsel pointed out that thereafter by order dated 20.12.2014 in I.A. 7314 of 2014, a review petition said to have been filed by the plaintiff in the suit, the court below directed the petitioner before this Court to produce the document before the court.

5. According to the learned counsel appearing for the petitioner, the petitioner is unable to do so for the simple reason that the property had been sold and the original title deed had been handed over to the vendee.

6. Learned counsel therefore pointed out that the order cannot be sustained.

7. Learned counsel for the respondent pointed out that the order directing return of the document to the petitioner is wrong as it has no support in law for the simple

reason that the document could have been returned to only that person who had produced it before court and when a document is returned by the court on a request made by a person, he is bound in law to produce the original as and when required by the court. Therefore, the petitioner is bound to comply with the order.

8. There is controversy between the parties as to how the plaintiff in the suit came into possession of the original title deed belonging to the defendant in the suit. There are different versions given by the parties. Any how, that is not a matter to be gone into at this point of time. However, it is to be noticed that there is no claim that there was any equitable mortgage created in pursuance to which the document was handed over and was produced before court. In fact the plea is that the original document of title of the property belonging to the defendant was offered as a security for the amount borrowed from the plaintiff. It is significant to notice that there is no order of attachment in

the suit against the property.

9. In this context, one has to view the act of the defendant in offering security for the suit amount and seeking release of his document of title. The security offered by him was accepted and document was directed to be returned without any conditions whatsoever. That order remains unchallenged. It was after the sale was made that the review petition was moved by the plaintiff in the suit. The position is such that as long as there is no direction to the petitioner that she shall produce the original document as and when required by the court to do so, and as long as there is no unconditional undertaking to return the document to the court, it becomes difficult to accept the present order. Moreover, the purpose for which it is directed to be returned to court is also not discernible.

10. It is not in dispute that the document was produced by the plaintiff in court. Whose version regarding as to when the plaintiff came into possession of the

document is correct is not a matter to be decided by the court. If the attempt of the plaintiff is only to show that the document was given to him as a security for the amount borrowed by the defendant, that plea still remains in tact even if the defendant has not a different version regarding how the document came into his possession. It is to be noted that no charge is also claimed over the property on the basis of possession of the title deed.

11. Viewed from the above angle, it becomes difficult now to understand as to for what purpose the original of the title deed is directed to be produced before court. It seems to serve no purpose.

For the above reason, this original petition is allowed and the impugned order is set aside.

sb.

P. BHAVADASAN,
JUDGE