

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

OP(C).No. 108 of 2015 (O)

IA.6276/2012 IN OS 1322/1992 OF PRINICPAL MUNSIFF'S COURT, ERNAKULAM.

PETITIONER:

**P.X.JOLLY, AGED 48 YEARS,
S/O PAILY, KELANTHARA HOUSE,
CHALIKKAVATTOM, VENNALA P.O.,
COCHIN-25.**

BY ADV. SRI.N.K.MOHANLAL

RESPONDENT:

**P.X.PETER, AGED 55 YEARS,
S/O XAVIER, PUTHENCHAKKALAKKAL HOUSE,
CHUTTUPADUKARA, EDAPPALLY - 24.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 108 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 : A TRUE COPY OF IA 6276/2012.

EXHIBIT P2 : A TRUE COPY OF OBJECTION.

**EXHIBIT P3 : A TRUE COPY OF OREER DATED 17.12.2014 IN I.A.6276/2012 IN
O.S.1322/1992 OF HON'BLE PRINCIPAL MUNSIFFS COURT,
ERNAKULAM.**

RESPONDENT(S)' EXHIBITS: - **NIL**

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.BHAVADASAN, J.

O.P.(C) No. 108 of 2015

Dated this the 12th day of February, 2015

J U D G M E N T

Under challenge is Ext.P3 order whereby the court below dismissed an application for passing of the final decree.

2. In a suit for partition, preliminary decree was passed and proceedings for passing of final decree were initiated by way of I.A.No.136/2005. In the said application, a Commission was issued and he filed a report and plan. However, that application was dismissed for default. Again the petitioner filed I.A.No. 6276/2012 for passing of final decree. The court below has dismissed the application on the ground that earlier application was dismissed for default and restoration ought to have been sought for.

3. The learned counsel appearing for the petitioner relying on the decision reported in **Bavoo v. Xavier** [1978 KLT 174] contended that dismissal of an earlier application is

not a ground to dismiss the application for final decree proceedings.

In the light of the above ruling, this petition is allowed and the impugned is set aside the matter is remanded to the trial court for fresh disposal in accordance with law. The trial court may make every endeavour to dispose of matter as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this judgment.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge