

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

OP(C).No.185 of 2015 (O)

**AGAINST THE ORDER IN IA NO.3/2015 & IA 5/2015 IN OS 87/2009 of
ADDL.MUNSIFF COURT, PALAKKAD.**

PETITIONER:

**KUNHAPPAN,AGED 59 YEARS,
S/O.LATE ELARI,KARIYATTIL HOUSE,
VADSSERY DESOM,KERALASSERY VILLAGE,
PALAKKAD TALUK & DISTRICT-678641**

BY ADV. SRI.K.P.BALAGOPAL

RESPONDENT:

**RAMAN,AGED 59 YEARS,S/O.LATE ELARI,
KARIYATTIL HOUSE,VADASSERY DESOM,
KERALASSERY VILLAGE,
PALAKKAD TALUK AND DISTRICT-678641**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 21-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

OP(C).No.185 of 2015 (O)

APPENDIX

PETITIONERS EXHIBITS

EXT P1:TRUE COPY OF THE IA.NO.3/2015 IN OS.87/2009 ON THE FILE OF THE COURT OF THE MUNSIF(ADDITIONAL),PALAKKAD.

EXT P2:TRUE COPY OF THE IA.NO.4/2015 IN OS.87/2009 ON THE FILE OF THE COURT OF THE MUNSIF(ADDITIONAL),PALAKKAD.

EXT P3:TRUE COPY OF THE IA.NO.5/2015 IN OS.87/2009 ON THE FILE OF THE COURT OF THE MUNSIF(ADDITIONAL), PALAKKAD.

EXT P4:TRUE COPY OF THE ORDER DATED 01.01.2015 ON THE FILE OF THE COURT OF MUNSIF(ADDITIONAL) PALAKKAD.

EXT P5:TRUE COPY OF THE ORDER DATED 01.01.2015 IN IA.NO.4/2015 IN OS.87/2009 OF THE LEARNED MUNSIF.

EXT P6:TRUE COPY OF THE ORDER DATED 1.1.2015 IN IA.NO.5/2015 IN OS.87/2009.

EXT P7:TRUE COPY OF THE JUDGMENT IN CMA.NO.68/2012 DATED 30.10.2014.

EXT P8:TRUE COPY OF THE WRITTEN STATEMENT DATED 17.03.2009 FILED BY THE RESPONDENT/DEFENDANT IN THE ORIGINAL SUIT.

RESPONDENTS EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P.BHAVADASAN, J.

Original Petition (Civil) No.185 OF 2015

Dated this the 21st day of January, 2015.

J U D G M E N T

Under challenge is Exts.P4, P5 and P6 orders whereby the court below dismissed I.A.Nos.3/2015, 4/2015 and 5/2015 in O.S.No.87/2009 before the Additional Munsiff Court, Palakkad.

2. The suit was one for partition in which the petitioner was the plaintiff. His brother is the defendant. Initially suit was decreed ex parte and the defendant filed an application to set aside the ex parte decree and that was allowed. The defendant filed a written statement and in the written statement, his specific contention was that there was a Will in his favour as per which he alone was entitled to property. He has also taken care to mention the registration number of the Will in his written statement.

3. It must be noticed here that in C.M.A.No.68/2012 which was disposed of by order dated 30.10.2014, the lower appellate court had directed the trial court to dispose of the matter within a

specified time. After trial began, plaintiff adduced evidence. After evidence was completed and the matter was taken up for hearing and posted for judgment, these petitions have been filed. The court below found no reason to re-open the evidence and adduce fresh evidence. The court below has noticed that those documents which are sought to be marked were available with the petitioner and he has knowledge about the same. There was neither any discovery of new fact nor any such factors which precluded the plaintiff from adducing evidence even after exercise of due diligence. Holding so, the petitions were dismissed.

4. Learned counsel appearing for the petitioner, assailing the findings of the court below, contended that the petitioner was put in difficulty due to the changing attitude of the defendant at the time of cross examination of the plaintiff. Certain answers extracted in the cross examination necessitated filing of petitions. It is pointed out that unless the petitioner is allowed to re-open the evidence and adduce further evidence, he may be put to irreparable loss and injury.

5. On going through the written statement of the

defendant, it is clear that the property of which partition is sought for is a property covered by the Will executed by the father of the parties and as per that Will, he alone is entitled to property. In the written statement, he was careful enough to mention the registration number of the document. Written statement was filed as early as in 2009. The claim of the learned counsel for the petitioner that it was only when the Will was produced before the court that its contents were known to the plaintiff cannot be accepted for more than one reason. There is nothing which prevented the plaintiff from getting certified copy of the Will for knowing the contents of the same. The written statement in which there is a mention of the Will was filed as early as in 2009. Off late, the tendency of getting the suit adjourned under one pretext or another necessarily will have to be stopped.

After getting orders from the court and after time limit fixed for disposal is over, petitions after petitions are being filed disabling the court from proceeding with the disposal of the case. There is no reason justifying re-opening of evidence in the case

on hand. There are no new facts brought out by the defendant nor is there anything to show that the plaintiff was not put on guard regarding the defence set up by the defendant. The court below was therefore perfectly justified in dismissing the petitions.

This petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge