

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

OP(C).No. 278 of 2015 (O)

OS.NO.474/2012 OF MUNSIF COURT, ATTINGAL

PETITIONER(S):

SAJEEV, AGED 45 YEARS,
S/O.SIVANANDAN, THONNYANVILAKAM VEEDU, PERUMKUZHY P.O.,
AZHOOR VILLAGE, CHIRAYINKEEZHU,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.J.JAYAKUMAR

RESPONDENTS:

1. SOBHANA, D/O.SYAMALA,
THONNIVILAMATHU VEEDU, NEAR MANNERVILAKAM TEMPLE,
PERUMKUZHY P.O., AZHOOR VILLAGE,
THIRUVANANTHAPURAM DISTRICT.
2. SINDHU,
D/O, OMANA, THONNIVILAKATHU VEEDU
NEAR MANNERVILAKAM TEMPLE, PERUMKUZHY P.O.
AZHOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT.
3. OMANA,
D/O.GOWRI, THONNIVILAKATHU VEEDU,
NEAR MANNERVILAKAM TEMPLE, PERUMKUZHY P.O.
AZHOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT.
4. DILEEP KUMAR,
S/O.PRABHAKARAN, THONNIVILAKATHU VEEDU,
NEAR MANNEERVILAKAM TEMPLE, PERUMKUZHY P.O.
AZHOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT.

R4 BY ADV. SMT.MINI.V.A.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 14-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE PLAINT IN OS NO. 474/2012 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, ATTINGAL.
- EXT.P2: TRUE COPY OF THE COMMISSION REPORT AND PLAN DATED 29/10/2012 IN OS.NO. 474/2012 FILED BY THE COMMISSIONER BEFORE THE MUNSIFF COURT, ATTINGAL.
- EXT.P3: TRUE COPY OF THE JUDGMENT DATED 21/10/2013 IN OS NO. 474/2012 OF MUNSIFF COURT, ATTINGAL.
- EXT.P4: TRUE COPY OF THE E.P.NO. 3/2014 IN O.S.NO. 474/2012 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, ATTINGAL.
- EXT.P5: TRUE COPY OF I.A.NO. 1203/2014 FILED BY THE RESPONDENTS IN O.S.NO. 474/2012 BEFORE THE MUNSIFF COURT, ATTINGAL.
- EXT.P6: TRUE COPY OF I.A.NO. 1204/2014 FILED BY THE RESPONDENTS IN OS.NO. 474/2012 BEFORE THE MUNSIFF COURT, ATTINGAL.
- EXT.P7: TRUE COPY OF I.A.NO. 1295/2014 FILED BY THE 4TH RESPONDENT IN OS.NO. 474/2012 BEFORE THE MUNSIFF COURT, ATTINGAL.
- EXT.P8: TRUE COPY OF THE COUNTER FILED BY THE PETITIONER AGAINST EXT.P5 PETITION.
- EXT.P9: TRUE COPY OF THE COUNTER FILED BY THE PETITIONER AGAINST EXT.P6 PETITION.
- EXT.P10: TRUE COPY OF THE COUNTER FILED BY THE PETITIONER AGAINST EXT.P7 PETITION.
- EXT.P11: TRUE COPY IF IA.NO. 2596/2014 FILED BY THE RESPONDENTS BEFORE MUNSIFF COURT, ATTINGAL.
- EXT.P12: TRUE COPY OF THE COMMON ORDER DATED 14/11/2014 IN I.A.NOS. 1203/2014, 1204/2014 AND 1295/2014 IN OS.NO. 474/2012 OF MUNSIFF COURT, ATTINGAL.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B.KEMAL PASHA, J.

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O.P.(C).No.278 of 2015

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Dated this the 14th day of July, 2015

J U D G M E N T

Exhibit P12 common order passed by the court below in I.A.No.1203 of 2014, I.A.No.1204 of 2014 and I.A.No.1295 of 2014 in O.S.No.474 of 2012, is under challenge. All the defendants in the suit were set *exparte* as there was no contest at all and an *exparte* decree was passed. When the *exparte* decree was put in execution, defendants 1 to 3 approached the court below through I.A.No.1203 of 2014 and I.A.No.1204 of 2014 for getting the *exparte* decree set aside and for getting the delay in filing the application condoned. The 4th defendant approached the court below through I.A.No.1295 of 2014 for getting the delay condoned and to get the *exparte* decree set aside. On 04.11.2014, the petitioner had filed detailed objections through Exhibits P8, P9 and P10 objections. Over and

above it, Exhibit P11 I.A. was also filed by the petitioner for recording evidence in the matter.

2. It seems that the court below has taken a view that no objections were filed in respect of the I.As. Even though the learned counsel for the petitioner had strongly resisted the I.As before the court below, the court below has allowed the I.As through Exhibit P12 common order on cost of ₹300/- each.

3. Heard the learned counsel for the petitioner and the learned counsel for the 4th respondent. There is no representation for respondents 1 to 3.

4. The learned counsel for the petitioner has pointed out that initially the court below had treated the matter lightly and wanted to allow the I.As on cost. The same was resisted and detailed objections were filed as Exhibits P8 to P10. Even then the court below has recorded that no objection was filed. The court below has taken a view that no objection was filed and therefore, those I.As could be allowed. When detailed objections were filed and the petitioner wanted to adduce evidence in the matter, the court

below ought not to have passed Exhibit P12 order by recording that no objection was filed. The objections raised by the petitioner in the counter statements have not been adverted to by the court below and the same have not been addressed in Exhibit P12 order. Matters being so, Exhibit P12 order is liable to be set aside.

In the result, Exhibit P12 order is set aside. The aforesaid I.As are revived and are remitted to the court below for fresh disposal in accordance with law, after giving an opportunity to the parties to adduce evidence in the matter.

In the result, this Original Petition (Civil) is allowed as above.

Sd/-

B.KEMAL PASHA
JUDGE