

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

OP(C).No. 344 of 2015 (O)

OS 247/2010 OF SUB COURT, KOLLAM
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PETITIONER(S)/JUDGMENT DEBTOR:

**RAVIKUMAR, AGED 47 YEARS,
S/O.RAGHAVAN PILLAI, R/AT AT KALLINGAZHIKATHU VEEDU,
KAVANAD P.O., MEENATH CHERRY, SAKTHIKULANGARA,
KOLLAM DISTRICT.**

**BY ADVS.SRI.SURESH KUMAR KODOTH
SRI.BINU GEORGE**

RESPONDENT(S)/DECREE HOLDER:

**MADHAVAN KUTTY, AGED 58 YEARS,
S/O.SIVARAMAN PILLAI, R/AT RAMYALAYAM,
CHAVARA SOUTH P.O., THEKKUMBHAGAM MURIYIL,
CHAVARA THEKKUMBHAGAM VILLAGE,
KOLLAM DISTRICT - 691 583.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 06-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 344 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE JUDGMENT DATED 29.8.2011 IN O.S.NO.247/2010 ON THE
FILE OF THE COURT OF SUB JUDGE OF KOLLAM.

EXT.P.2 TRUE COPY OF THE AGREEMENT DATED 28.9.2011.

EXT.P3: TRUE COPY OF THE IA NO.4450/2011 IN O.S.NO.247/2010.

EXT.P.4 TRUE COPY OF THE I.A.NO.4739/2011 IN O.S.NO.247/2010.

EXT.P.5 TRUE COPY OF THE REGISTERED LAWYER NOTICE DATED 29.5.2012 TO THE
RESPONDENT.

EXT.P.6 TRUE COPY OF THE REPLY DATED 3.6.2012.

EXT.P.7: TRUE COPY OF THE EP NO.196/2013 IN O.S NO.247/2010.

EXT.P.8 TRUE COPY OF THE COUNTER FILED BY PETITIONER.

EXT.P.9: TRUE COPY OF THE JUDGMENT DATED 28.11.2014 IN O.P(C)NO.2824/2014.

EXT.P.10 TRUE COPY OF THE AFFIDAVIT ON 15.1.2015.

EXT.P.11: TRUE COPY OF THE E.A.NO.13/2015 IN E.P.196/2013 IN O.S.247/2010.

EXT.P.12 TRUE COPY OF THE E.A.NO.12/2015 IN E.P.NO.196/2013 IN O.S.NO.247/2010.

EXT.P.13 TRUE COPY OF THE COMMON ORDER DATED 17.1.2015 IN E.A.NO.13/2015
AND E.A.NO.12/2015 IN E.P.NO.196/2013 IN O.S.247/2010.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. BHAVADASAN, J.

O.P.(C). No. 344 of 2015

Dated this the 6th day of February, 2015.

JUDGMENT

Aggrieved by the order dated 17.1.2015 in E.A. No. 13 of 2015 and E.A. No. 12 of 2015 in E.P. No. 196 of 2013, the petitioner has come up with this Original Petition under Article 227 of the Constitution of India.

2. It is not in dispute that the petitioner suffered a decree for specific performance as evidenced by Ext. P1. The claim of the petitioner is that subsequent to the decree, a compromise was entered into and a sum of Rs.2,50,000/- was paid to the plaintiff and satisfied the decree. Concealing that fact, the plaintiff has taken out execution of the decree. While execution proceedings are pending, the petitioner filed E.A. 13 of 2015 seeking to send the agreement for expert opinion.

3. The court below found that even assuming that the payment is alleged to be true, cannot be taken note of in view of the provisions in the Code of Civil Procedure, no purpose will be served by sending the document for expert opinion and dismissed the petition.

4 Learned counsel appearing for the petitioner pointed out that the court below was not justified in dismissing the petition since there was a serious issue to be gone into. The specific case of the petitioner is that as per the compromise, a sum of Rs.2,50,000/- was paid which the decree holder received, and in the light of the said fact, it could have been only appropriate for the court to send the document for expert opinion.

5. Unfortunately for the petitioner, as rightly noticed by the court below, even though there is a compromise, it cannot be taken note of under C.P.C. If the petitioner has a case that the decree was compromised and

a sum of Rs.2,50,000/- was paid to the respondent, it is for him to agitate the statutory remedies available to him. The court below was therefore justified in declining to grant the relief prayed for by the petitioner.

No grounds are made out to interfere with the order of the court below. However, it is open to the petitioner to take such steps as are available to him in accordance with law. Execution of the sale deed shall be kept in abeyance for a period of two weeks from today.

P. BHAVADASAN,
JUDGE

sb.