

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

OP(C).No. 351 of 2015 (O)

AGAINST THE ORDER IN IA NO. 936/2014 IN OS 37/2011 OF SUB COURT, HOSDRUG

PETITIONER/DEFENDANT :

**PARACKALETH YESHODHARAN, AGED 59 YEARS
S/O.SUKUMARAN, PERUMBALLI, KALLAR VILLAGE
HOSDURG TALUK, KASARAGOD DISTRICT.**

**BY ADVS.SRI.T.K.VIPINDAS
SRI.K.V.SREEVINAYAKAN
SRI.K.M.HASHIR
SRI.K.M.MUHAMMED HUSSAIN**

RESPONDENT/PLAINTIFF :

**ERAMBIL REJIMON, AGED 46 YEARS
S/O.JOHN NELLIKATTU, BALLA VILLAGE, P.O.BALLA
HOSDURG TALUK, KASARAGOD DISTRICT-671123.**

**BY SENIOR ADVOCATE SRI.GRASHIOUS KURIAKOSE
BY ADVS. SRI.M.M.ANTO
SRI.GEORGE MATHEWS**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

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...2/-

OP(C).No. 351 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 THE TRUE COPY OF THE PLAINT IN O.S.37 OF 2011 ON THE FILES OF SUBORDINATE JUDGE, HOSDURG.
- EXT.P2 THE TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN O.S. NO.37 OF 2011 ON THE FILES OF SUBORDINATE JUDGE, HOSDURG.
- EXT.P3 THE TRUE COPY OF THE ISSUES FRAMED BY THE COURT OF MUNSIFF, HOSDURG IN O.S.75/2011 DATED 6-6-2012.
- EXT.P4 THE TRUE COPY OF THE COMMISSION REPORT AND EYE-SKETCH FILED BY THE ADVOCATE COMMISSIONER DATED 5-3-2014.
- EXT.P5 THE TRUE COPY OF THE EYE-SKETCH.
- EXT.P6 THE TRUE COPY OF THE AMENDMENT APPLICATION AS I.A.936/2014 IN O.S.37/2011.
- EXT.P7 TRUE COPY OF THE COUNTER IN I.A.936/2014 IN O.S.37/2011 DATED 20-11-2014.
- EXT.P8 THE TRUE COPY OF THE ORDER IN I.A.936/2014 IN O.S.37/2011 BEFORE THE SUBORDINATE JUDGE, HOSDURG DATED 7-1-2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

B. KEMAL PASHA, J.

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O.P.(C) No.351 of 2015
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Dated this the 10th day of June, 2015

J U D G M E N T

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The suit before the court below is one for specific performance of a contract of sale of immovable property allegedly having an extent of 1 acre and 33 cents. There is a clause in the contract that, on measurement in case it is found that there is deficit for more than 5 cents in the total extent of the property, the respondent herein is entitled to proportionate deduction in the sale price. According to the respondent, he conducted a measurement of the property through the Village Officer and then, it was found that there was a deficit of 11 cents in the total extent of the property. Therefore, he demanded proportionate deduction from the sale price. The petitioner, who is the proposed vendor, objected to it and took the stand that there would not be a deficit of 5 cents or more. Therefore, the suit was

necessitated. In the suit, a Commission was taken out and the property was measured out. It was ultimately found that deficit is only of half cent from the total extent. In the light of the Commissioner's report and plan, the plaintiff, who is the respondent herein, has sought for an amendment of the plaint through Ext.P6. The amendment was allowed by the court below through Ext.P8 order. The same is under challenge.

2. Heard learned counsel for the petitioner and learned counsel for the respondent.

3. According to the learned counsel for the petitioner, there is no scope for any such amendment as there cannot be any proportionate deduction in the sale price in terms of the contract as the deficit is only half cent. It is also argued that the amendment will create a fresh cause of action instead of the original cause of action. The further argument is that there cannot be a cause of action to the suit as there was no dispute at all in terms of the contract.

4. Those questions do not arise at present. The amendment sought for is solely based on the Commissioner's report and plan. On account of the amendment, it seems that there is no change to the cause of action. The questions whether there was a dispute or there was cause of action are matters to be decided by the court below in the suit. On going through Ext.P8 order and on hearing either side, I do not find anything to interfere with Ext.P8 order. This OP(Civil) is devoid of merits and is only to be dismissed, and I do so.

In the result, this OP(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/10/06

// True Copy //

PA to Judge