

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

OP(C).No. 366 of 2015 (O)

**I.A.NO.168/2015 IN O.S.NO.131/2013 BEFORE THE SUB COURT,
KARUNAGAPPALLY**

PETITIONER :-

**HUSSAIN, S/O.YOUSUF KUNJU,
ALFIAS KIZHAKKEKKARA MURI,
THAZHAVA VILLAGE,
KARUNAGAPPALLY.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS :-

**1. ABDUL RAHMAN,
S/O.KOYAKUTTY,
KANIYAM KUNNEL VEEDU,
KALLELIBHAGOM MURI,
KALLELIBHAGOM VILLAGE,
KARUNAGAPPALLY,
KOLLAM DISTRICT - 690 519.**

**2. HAJIRA BEEVI,
W/O.ABDUL RAHMAN,
KANIYAM KUNNEL VEEDU,
KALLELIBHAGOM MURI,
KALLELIBHAGOM VILLAGE,
KARUNAGAPPALLY,
KOLLAM - 690 519.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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OP(C).No. 366 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :-

EXHIBIT P1 :- TRUE COPY OF THE AGREEMENT FOR SALE DATED 03.12.2012.

EXHIBIT P2 :- TRUE COPY OF THE APPLICATION IA. IN OS. 131/2013
BEFORE THE SUB COURT, KARUNAGAPPALLY, SEEKING
REVIEW DATED 26.06.2014.

EXHIBIT P3 :- TRUE COPY OF THE APPLICATION, IA.168/2015 IN OS. 131/2013
BEFORE THE SUB COURT, KARUNAGAPPALLY DATED 17.01.2015.

EXHIBIT P4 :- TRUE COPY OF THE OBJECTION DATED 07.02.2015 IN
IA. 168/2015 IN OS. 131/2013 BEFORE THE SUB COURT,
KARUNAGAPPALLY.

EXHIBIT P5 :- TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED
19.01.2015.

RESPONDENT(S)' EXHIBITS :- NIL

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//TRUE COPY//

P.A. TO JUDGE

P.BHAVADASAN, J.

O.P.(C) No.366 of 2015

Dated this the 9th day of February, 2015

JUDGMENT

The limited prayer in this original petition is for a direction to the Sub Court, Karunagappally to take up Exhibit P3 and pass appropriate orders thereon.

2. The suit is one for return of advance money paid in pursuance to a sale agreement. Along with the suit, the plaintiff filed an application for attachment of the property. No orders were passed in that application. Later it so happened that for want of payment of balance court fee, the plaint was rejected. Later it was restored. Thereafter Exhibit P3 application was filed for the attachment. In the meanwhile, the plaintiff has assigned the property. Now the suit stands listed for trial on 10.02.2015. Petitioner has to be examined by a commission. The petitioner points out that without disposing of the interlocutory application it is quite improper on the part of the Court to proceed with the trial.

In the result, this Original Petition is allowed and the Court below is directed to take up interlocutory application pending before that Court and dispose it of on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this judgment. Trial shall be kept in abeyance for three weeks from today. The learned counsel for the petitioner also pointed out that he may be given an opportunity to file a replication to the written statement filed by the defendant. If so prayed for, the Court may grant an opportunity to the plaintiff. It is trite that if he is not in default, the petitioner is entitled to charge over the property.

**P.BHAVADASAN
JUDGE**

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