

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

OP(C).No. 1985 of 2013 (O)

E.P.NO.23/2003 IN OS 356/2006 OF MUNSIFF COURT, VAIKOM.
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PETITIONER(S)/SECOND JUDGMENT DEBTOR/SECOND DEFENDANT:

**JIJI MATHEW, AGED 38 YEARS, S/O.P.C.MATHAI,
RESIDING AT PANACHICKAL HOUSE, NO.307,
WARD NO.IV, KATTAMPAK KARA, NEEZHOOR VILLAGE,
VAKKAD POST OFFICE LIMITS,
VAIKKOM TALUK IN KOTTAYAM DISTRICT - 686 636.**

BY ADV. SRI.P.M.NATESAN

**RESPONDENT(S)/DECREE HOLDER AND FIRST JUDGMENT
DEBTOR/PLAINTIFF AND FIRST DEFENDANT:**

- 1. M/S KUNNATHUKALATHIL FINANCIERS,
MARKET ROAD, KOTTAYAM,
A REGISTERED PARTNERSHIP FIRM REP. BY
ITS MANAGING PARTNER K.V.VIOSWANATHAN,
AGED 61 YEARS, S/O.VASUDEVA PANICKER,
RESIDING AT GINO BHAVANAM, KUNNATHUKALATHIL,
THEKKUMGOPURAM, KOTTAYAM - 686 001.**
- 2. JACOB THOMAS, AGED 40 YEARS,
S/O.V.M.THOMAS, RESIDING AT KRUPA COTTAGE,
WARD NO.III, KUMMANAM KARA, KUMMANAM P.O.,
KOTTAYAM - 686 572.**

R1 BY ADV. SRI.MATHEW PHILIP EDAPPALLIL

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER FROM SOUTH INDIA BAPTIST BIBLE COLLEGE AND SEMINARY, BAPTIST NAGAR, COIMBATORE, TAMIL NADU, (UNDATED)
- EXT.P2: TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER FROM SOUTH INDIA BAPTIST BIBLE COLLEGE AND SEMINARY, BAPTIST NAGAR, COIMBATORE, TAMIL NADU, (UNDATED)
- EXT.P3: TRUE COPY OF THE CERTIFICATE ISSUED FROM THE ST.THOMAS ENGLISH SCHOOL (L.P.SCHOOL), BIRDPUR, SIDDHARTHANAGAR IN UTTAR PRADESH STATE, DATED 04/05/2013.
- EXT.P4: TRUE COPY OF THE IDENTITY CARD, ISSUED TO THE PETITIONER FROM ELECTION COMMISSION OF INDIA, DATED 08/01/2013.
- EXT.P5: TRUE COPY OF THE EXECUTION PETITION NO.23 OF 2013 IN O.S NO.356 OF 2006 IN THE FILE OF MUNSIFF'S COURT, VAIKKOM, DATED 02/02/2013.
- EXT.P6: TRUE COPY OF THE OBJECTION IN EXECUTION PETITION IN O.S NO.356 OF 2006 IN THE FILE OF MUNSIFF'S COURT, VAIKKOM, DATED 03/06/2013.
- EXT.P7: TRUE COPY OF THE APPLICATION FOR CERTIFIED COPIES IN O.S NO.356 OF 2006 IN THE FILE OF MUNSIFF'S COURT, KOTTAYAM, DATED 24/05/2013.

RESPONDENT(S)' EXHIBITS:

- EXT.R1(A): TRUE COPY OF THE JUDGMENT DATED 18.3.2009 IN OS.NO.356/06 OF THE ADDITIONAL MUNSIFF COURT, KOTTAYAM.
- EXT.R1(B): TRUE COPY OF EXECUTION PETITION DATED 9.11. FILED BEFORE ADDITIONAL MUNSIFF COURT, VAIKOM.
- EXT.R1(C): TRUE COPY OF APPLICATION FOR SALE OF LAND DATED 30.9.2011.
- EXT.R1(D): TRUE COPY OF APPLICATION DATED 21.12.2011 FILED BY PETITIONER PRAYING INSTALLMENTS.
- EXT.R1(E): TRUE COPY OF APPLICATION DATED 1.3.2012 FILED BY PETITIONER PRAYING ADJOURNMENT OF AUCTION.
- EXT.R1(F): TRUE COPY OF JUDGMENT IN AS.202/2013 BEFORE THE COURT OF ADDL. DISTRICT JUDGE II(SPECIAL) KOTTAYAM.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. ABRAHAM MATHEW, J.

O.P.(C)No. 1985 of 2013

Dated this the 18th day of July, 2015

J U D G M E N T

Petitioner is the judgment debtor in OS.356 of 2006. The decree allowed the respondent-decree holder to realise certain amount from him in execution of the decree. The petitioner's property was sold in auction. The respondent-decree holder purchased it. He filed Ext.P5 application for delivery. This OP has been filed to declare that the judgment and the decree in the suit are null and void and Ext.P5 delivery application is not legally maintainable. There is also a prayer to stay further proceedings in the executing court.

2. Heard.

3. The petitioner filed AS.202 of 2013 in District Court, Kottayam as seen from Ext.R1 judgment. The appeal was dismissed as the appellant failed to prosecute with the appeal in spite of several adjournments.

4. The prayer to declare the judgment and the decree in the suit cannot even be taken notice of. The

property was sold pursuant to the decree. The respondent is entitled to take delivery of the property. I do not find any reason to allow any of the prayers in the O.P.

In the result, this OP is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge