

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP(C).No. 490 of 2015 (O)

**AGAINST THE ORDER/JUDGMENT IN OS 110/2013 of PRINCIPAL SUB
COURT,KOCHI -----**

PETITIONER(S):

**BABU AGED 66 YEARS
S/O.K.A.NARAYANAN, RESIDING AT KOIMA PARAMBIL HOUSE
KUMBALANGI P.O, KOCHI TALUK, PIN 682007**

BY ADV. SRI.B.PRAMOD

RESPONDENT(S):

**1. K.N.VIBHU
S/O.K.A.NARAYANAN, RESIDING AT KOIMA PARAMBIL HOUSE
KUMBALANGI PO, KOCHI TALUK, PIN 682007**

**2. K.V.VINEETH
S/O.K.N.VIBHU, RESIDING AT KOIMA PARAMBIL HOUSE
KUMBALANGI PO, KOCHI TALUK, PIN 682007**

**R1 & 2 BY ADV. SRI.D.ARUN GEORGE
R1 & 2 BY ADV. SRI.K.S.SREERAJ**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1:TRUE COPY OF THE PLAINT IN OS.NO.110/2013 ON THE FILE OF THE SUB COURT, KOCHI

EXHIBIT.P2:TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN OS. NO. 110/2013 ON THE FILE OF THE SUB COURT, KOCHI.

EXHIBIT.P3:TRUE COPY OF THE ORDER DATED 20.11.2014 IN IA.NO.130/2014 AND IA.NO.1148/2014 IN OS.NO.110/2013 ON THE FILE OF THE SUB COURT, KOCHI

EXHIBIT.P4:TRUE COPY OF THE IA.NO.1490/2014 IN OS.NO.110/2013 ON THE FILE OF THE SUB COURT, KOCHI

EXHIBIT.P5:TRUE COPY OF THE IA.NO.1489/2014 IN OS.NO.110/2013 ON THE FILE OF THE SUB COURT, KOCHI

EXHIBIT.P6:TRUE COPY OF THE OBJECTION FILED IN IA.NO.1490/2014 IN OS.NO.110/2013 ON THE FILE OF THE SUB COURT, KOCHI

EXHIBIT.P7:TRUE COPY OF THE OBJECTION FILED IN IA.NO.1489/2014 IN OS.NO.110/2013 ON THE FILE OF THE SUB COURT, KOCHI

EXHIBIT.P8:TRUE COPY OF THE ORDER DATED 21.01.2015 PASSED IN IANO.1490/2015 IN OS.NO.110/2013 O THE FILE OF THE SUB COURT, KOCHI

EXHIBIT.P9:TRUE COPY OF THE ORDER DATED 21.01.2015 PASSED IN IA.NO.1489/2015 IN OS.NO.110/2013 ON THE FILE OF THE SUB COURT, KOCHI

RESPONDENT'S EXHIBITS: NIL

R.AV

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PA to Judge

K. ABRAHAM MATHEW, J.

O.P.(C)NO.490 of 2015

Dated this the 9th day of November, 2015

J U D G M E N T

Petitioner is the defendant in Ext.P1 suit filed by the first respondent for specific performance of an agreement for sale of an immovable property. The agreement was between the petitioner and the second respondent, who is none other than the son of the first respondent. So, the second respondent filed Ext.P4 application to get himself to impleaded as additional second respondent. That has been allowed by the learned Sub Judge though it was objected by the petitioner. This is challenged.

2. Heard.

3. It is true that under Order 1 Rule 10 (1) CPC if a suit is instituted in the name of a wrong person as plaintiff the court may at any stage of the suit allow substitution or addition of the persons sought who should have been made the plaintiff. But it is necessary that it was result of a bonafide mistake that the persons sought to be substituted or impleaded was not made a party to

the suit. In this case the first respondent filed an application under Order 38 Rule 5 CPC on 28.09.2013. The petitioner filed an objection to it, in which it is specifically contended that the contract was between him and the second respondent and the first respondent has no cause of action against the petitioner. But the second respondent filed his application for impleadment only on 19.11.2014. So it is very clear that the first respondent has no bona fides. His attempt was to get the property of the petitioner attached by filing a suit against the petitioner though he has no cause of action against him. The suit is not time barred. It is only proper that the second respondent is directed to file a fresh suit if he is so advised.

In the result, this O.P. is allowed. The impugned order is set aside.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

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PA to Judge