

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

OP(C).No. 506 of 2015 (O)

O.S.NO.344/2012 OF MUNSIFFS COURT, CHANGANACHERRY

PETITIONER/PETITIONER/PLAINTIFF:

**RAJAGOPALAN, AGED 59 YEARS,
S/O.BAPPU, RESIDING AT PUTHUPARAMBIL (H),
VAZHAPALLY (P.O.), VAZHAPPALLY EAST VILLAGE,
CHANGANACHERRY TALUK, KOTTAYAM.**

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS/RESPONDENTS/DEFENDANTS:

- 1. GANESAN, AGED 52 YEARS,
S/O.VASU, ILLAMPALLIL HOUSE, VAZHAPPALLY P.O.,
NEAR AMMEN KOVIL TEMPLE, VAZHAPPALLY EAST VILLAGE,
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT- 686673.**
- 2. VIJAYA, AGED 47 YEARS,
W/O.GANESAN, RESIDING AT ILLAMPALLIL HOUSE,
VAZHAPPALLY (P.O.), NEAR AMMEN KOVIL TEMPLE,
VAZHAPPALLY EAST VILLAGE, CHANGANACHERRY TALUK,
KOTTAYAM DISTRICT-686673.**

**R1 & 2 BY ADV. SRI.JOMY GEORGE
R1 & 2 BY ADV. SRI.SEBASTIAN THOMAS
R1 & 2 BY ADV. SRI.PREJINARK
R1 & 2 BY ADV. SRI.ABRAHAM PHILIP (PAMPADY)
R1 & 2 BY ADV. SMT.K.J.ANITHA**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 506 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1: THE COPY OF THE PLAINT IN O.S.NO.344/2012 BEFORE THE MUNSIFFS COURT, CHANGANACHERRY.
- EXHIBIT-P2: THE COPY OF THE COUNTER CLAIM IN O.S.NO.344/2012 BEFORE THE MUNSIFFS COURT, CHANGANACHERRY.
- EXHIBIT-P3: THE COPY OF THE I.A.NO.1968/2013 IN O.S.NO.344/2012 BEFORE THE MUNSIFFS COURT, CHANGANACHERRY.
- EXHIBIT-P4: THE COPY OF THE OBJECTION FILED BY THE PETITIONER AGAINST EXHIBIT P3 - INTERIM MANDATORY INJUNCTION APPLICATION.
- EXHIBIT-P5: THE COPY OF THE COMMISSION REPORT ALONG WITH THE ROUGH SKETCH DATED 21.3.2014 SUBMITTED BY THE COMMISSIONER.
- EXHIBIT-P6: THE COPY OF THE ORDER DATED 5.8.2014 I.A.1968/2013 IN O.S.NO.344/2012 BEFORE THE MUNSIFFS COURT, CHANGANACHERRY DT.5.8.14.
- EXHIBIT-P7: THE COPY OF THE CMA 40/2014 BEFORE THE ADDITIONAL DISTRICT COURT-II (SPECIAL) KOTTAYAM.
- EXHIBIT-P8: THE COPY OF THE INTERIM ORDER DATED 29.8.2014 IN I.A.NO.1240/2104 IN CMA NO.40/2014 BEFORE THE ADDITIONAL DISTRICT COURT-II (SPECIAL) KOTTAYAM.
- EXHIBIT-P9: THE CERTIFIED COPY OF THE ORDER DATED 6.1.2015 IN CMA 40/2014 BEFORE THE ADDITIONAL DISTRICT COURT-II (SPECIAL) KOTTAYAM.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

AK

K. ABRAHAM MATHEW, J.

O.P.(C).No. 506 of 2015

Dated this the 09th day of October, 2015

JUDGMENT

Petitioner is the plaintiff in O.S.No. 344/2012 on the file of Munsiff court, Changanacherry. Challenging the order in I.A.No. 1968/2013 he filed C.M.A. 40/2014. The learned Additional District Judge, before whom the C.M.A. came up for disposal, passed an order transferring the suit from Munsiff Court, Changanacherry to Munsiff Court, Kottayam. This is challenged.

2. Heard.

3. It is very surprising that the Additional District Judge even did not know his powers and lack of powers. He had no power to order "transfer of the suit". It is quite unfortunate that he passed the order in a C.M.A. No doubt, the order is per se illegal as it was passed without jurisdiction.

In the result, Exhibit P9 order is set aside. The learned Additional District Judge is directed to dispose of C.M.A. on merits. It is made clear that the order of transfer of the suit is set aside.

Sd/-

K. ABRAHAM MATHEW, JUDGE.

AK

//True copy//

P.A. to Judge