

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

OP(C).No. 545 of 2015 (O)

(OS 25/2009 of SUB COURT, KOTTARAKKARA)

PETITIONER:

K.T.KURIAKOSE, AGED 76 YEARS
S/O.LATE THOMAS, KARUTHEDATH HOUSE, THIRUVANIYOOR.

BY ADVS.SRI.P.JACOB VARGHESE (SR.)
SRI.VIVEK VARGHESE P.J.
SRI.VARUGHESE M EASO

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. SUPERINTENDING ENGINEER,
KALLADA IRRIGATION PROJECT, R.B.CIRCLE
KOTTARAKKARA-691 308.
3. EXECUTIVE ENGINEER,
K.I.P.R.B DIVISION NO.II, KOTTARAKKARA-691 308.

BY GOVERNMENT PLEADER SRI. REJI JOSEPH.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 545 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT.P1: TRUE COPY OF PLAINT IN O.S.NO.25/2009 ON THE FILE OF SUB COURT, KOTTARAKKARA DATED 21.1.2009.

EXHIBIT.P2: THE TRUE COPY OF THE JUDGMENT DATED 17.9.1999 IN O.P.NO.18497/1999 OF THIS HON'BLE COURT.

EXHIBIT.P.3: THE TRUE COPY OF THE JUDGMENT DATED 22.2.2008 IN CONT.CASE(C)NO.796/2004 OF THIS HON'BLE COURT.

EXHIBITP.4: THE TRUE COPY OF THE IA NO.331/2015 FOR REMOVING THE CASE FROM THE LIST DATED 19.2.2015.

EXHIBIT P5: COPY OF ORDER DTD.26.2.15 IN I.A.331/2015 IN O.S.25/2009 OF SUB COURT, KOTTARAKKARA.

EXHIBIT P6: COPY OF APPLICATION I.A.330/15 DTD.26.2.15 ALONG WITH LIST OF DOCUMENTS IN O.S.25/2009 OF SUB COURT, KOTTARAKKARA.

EXHIBIT P7: COPY OF ORDER IN I.A.330/15 DTD.26.2.15 IN O.S.25/2009 OF SUB COURT, KOTTARAKKARA.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.545 OF 2015

Dated this the 7th day of April, 2015.

J U D G M E N T

Under challenge is Ext.P5 order whereby the court below declined to remove the case from the list.

2. The petitioner points out that in pursuance to the direction of this Court in a petition, he filed a suit for recovery of the amount due to him. According to the petitioner, even though he asked the defendant-State to produce certain documents, they did not do so. He therefore sought for removal of the case from the list and also a direction to the defendants to produce the documents. That petition was dismissed and that brings the petitioner before this Court.

3. Learned counsel appearing for the petitioner pointed out that the court ought not to have dismissed the petition calling upon the defendants to produce the documents. In case the defendants were not in possession of the documents, they could have filed an affidavit. At any rate, the court below was not

justified in dismissing the petition holding that the petition is intended to protract the proceedings. There is no case for the State that the documents, production of which was sought for, are not relevant for the purpose of the suit.

4. There seems to be considerable force in the submission made by the learned counsel for the petitioner.

5. Learned Government Pleader submitted that he wanted time to get instructions regarding the availability of the documents.

If the documents are not available, it is for the State to file an affidavit. The petitioner is given liberty to move the court concerned to call for records from the court concerned where the documents are kept.

With the above observation, this original petition is disposed of.

Sd/-

**P.BHAVADASAN
JUDGE**

smp