

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

OP(C).No. 572 of 2015 (O)

OS 225/2010 OF SUB COURT, KATTAPPANA.

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PETITIONER(S):

1. CHELLAMMA, W/O. RAVEENDRAN,
NEDIYAKALAYIL HOUSE, KUMILY KARA,
KUMILY VILLAGE, PEERMEDE TALUK,
IDUKKI DISTRICT.
2. NISHA, D/O. RAVEENDRAN, NEDIYAKALAYIL HOUSE,
KUMILY KARA, KUMILY VILLAGE, PEERMEDE TALUK,
IDUKKI DISTRICT.
3. N.A.RAVEENDRAN, S/O. KRISHNAN, NEDIYAKALAYIL HOUSE,
KUMILY KARA, KUMILY VILLAGE, PEERMEDE TALUK,
IDUKKI DISTRICT.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENT(S):

1. N.GUNASEKARAN, S/O. NADARAJAN, DOOR NO.20/1,
ANAIMALAM PETTYTHERUVU, UTHAMAPALAYAM TALUK,
THENI DISTRICT, TAMIL NADU-625 526.
2. PARTHASARATHI PROPERTIES PRIVATE LIMITED,
35/3075-A, 1ST FLOOR, MADAPARAMBIL BUILDING,
THAMMANAM MAIN ROAD, PALARIVATTOM, KOCHI,
ERNAKULAM DISTRICT-682 025, REPRESENTED BY ITS
MANAGING DIRECTOR, GIREESH KUMAR K.
3. V.D.RAJAN, S/O.DAMODHARAN, VARAKIL HOUSE, ADIMALY,
NOW WORKING AS SENIOR MANAGER, FEDERAL BANK LIMITED,
REGIONAL OFFICE, ALUVA, ERNAKULAM DISTRICT, PIN-683 101.

**R1 BY ADVS. SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)**

**R3 BY ADV. SRI.BASIL MATHEW
OFFICIAL LIQUIDATOR BY ADV. SRI.K.MONI**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 572 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : TRUE COPY OF THE PLAINT IN OS NO.225/2010 BEFORE THE SUB JUDGE, KATTAPPANA DATED 16.11.2010.
- P2 : TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.225/2010 BEFORE THE SUB JUDGE, KATTAPPANA, DATED 13.3.2013.
- P3 : TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA NO.925/2014 DATED 8.10.2014.
- P4 : TRUE COPY OF THE ORDER PASSED BY THE SUB JUDGE, KATTAPPANA IN IA NO.925/2014 IN OS NO.225/2010, DATED 10.2.2015.
- P5 : TRUE COPY OF THE PAYMENT VOUCHER DATED 4.7.2008.
- P6 : TRUE COPY OF THE PAYMENT VOUCHER DATED 21.3.2009.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

.....
O.P.(C) No. 572 of 2015
.....

Dated this the 8th day of July, 2015

J U D G M E N T

The suit is one seeking declaration of title over the plaint schedule property and for setting aside sale deed No.553 of 2009 of the Peermede Sub Registry executed by plaintiffs 1 and 2 in favour of the first defendant, and also for getting a re-conveyance to be executed from the first defendant in favour of plaintiffs 1 and 2.

2. It is the case of the plaintiffs 1 and 2 that they happened to obtain a loan from the first defendant, for which they were forced to execute a sale deed in respect of the plaint schedule property in favour of the first defendant, just as a security.

3. Subsequently, the 2nd defendant has come forward and got impleaded in the suit on the ground that it was for the purpose of 2nd defendant that the loan was obtained by plaintiffs 1 and 2 from the first defendant. The husband of the 2nd plaintiff is one of the directors of the 2nd defendant. Thereafter, the 2nd defendant filed a written statement, contending that the first defendant is really a name lender of a person called V.D. Rajan. Immediately thereafter, plaintiffs have preferred Ext.P3 IA for getting the said V.D. Rajan impleaded as additional 3rd defendant in the suit. The first defendant opposed the said IA on the ground that the proposed additional 3rd defendant is not in any way connected with the transaction and that the document sought to be set aside is a sale deed happened to be executed by plaintiffs 1 and 2 in favour of the first plaintiff alone. The court below through Ext.P4 has dismissed the IA and the said order is under challenge.

4. Heard the learned counsel for the petitioners,

learned counsel for the first respondent, and the learned counsel for the 3rd respondent who is the proposed additional 3rd defendant, who is sought to be impleaded before the court below.

5. The learned counsel for the first respondent and the learned counsel for the proposed additional 3rd defendant, have pointed out that the proposed additional 3rd defendant has no connection with the transaction and he is not a name lender. According to the learned counsel for the petitioners, even though the proposed additional 3rd defendant is not a necessary party to the suit, he is a proper party and therefore, he has to be impleaded.

6. On hearing all the learned counsel for the parties, it seems that Ext.P4 order does not require any interference at all and it does not suffer from any illegality, irregularity, or jurisdictional error. When the document is allegedly executed in favour of the first defendant alone, in the light of the reliefs sought for, the proposed additional 3rd defendant

is not a necessary party or not even a proper party to the proceedings. For getting the title of the plaintiffs declared or for getting the re-conveyance or for cancellation of the sale deed, the 1st defendant alone need be impleaded in the suit. It seems that the 2nd defendant got himself impleaded voluntarily. There is every reason to suspect that it is a collusive affair between the 2nd defendant and the plaintiffs. Matters being so, this Original Petition is devoid of merits, and is only to be dismissed.

In the result, this Original Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge