

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

OP(C).No. 708 of 2015 (O)

AGAINST THE ORDER IN CMA 120/2011 of IV ADDL. DISTRICT COURT, THRISSUR
IA.4945/2010 IN OS NO.425/2004 OF PRINCIPAL SUB COURT, THRISSUR

PETITIONER(S):

1. AMINU, AGED 64 YEARS
W/O.ALI, VEETILAVALLAPPIL HOUSE
KARIKAD P.O.VIA. KUNNAMKULAM, THRISSUR
2. SALMA, AGED 46 YEARS
D/O.ALI, VEETILAVALLAPPIL HOUSE
KARIKAD P.O.VIA. KUNNAMKULAM, THRISSUR.
3. SULEKHA, AGED 39 YEARS
D/O.ALI, VEETILAVALLAPPIL HOUSE
KARIKAD P.O.VIA. KUNNAMKULAM, THRISSUR.

BY ADVS.SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR
SMT.SONIYA SUNNY

RESPONDENT(S):

1. BIJOY KOSHY
S/O.V.G.KOSHY, SANNITHI VEETIL HOUSE, NEHRU NAGAR
AMBISSERY, KUNNAMKULAM, THRISSUR.
2. ANJU BIJOY KOSHY
W/O.BIJOY KOSHY, SANNITHI VEETIL HOUSE, NEHRU NAGAR
AMBISSERY, KUNNAMKULAM, THRISSUR.

R1 & 2 BY ADV. SRI.PRAMACHANDRAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 708 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: A TRUE COPY OF THE PLAINT IN OS NO.425/2004 ON THE FILE OF
PRINCIPAL SUB COURT, THRISSUR.

EXT.P-2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE FATHER OF THE
PETITIONERS

EXT.P-3: A TRUE COPY OF IA NO.4945/2010

EXT.P-4: TRUE COPY OF THE COUNTER FILED BY THE RESPONDENTS HEREIN.

EXT.P-5: A TRUE COPY OF THE IA NO.4945/2010 DATED 4.11.2010

EXT.P-6: A TRUE COPY OF THE ORDER DATED 10.12.2014 PASSED IN CMA 120/2010

RESPONDENT(S)' EXHIBITS : NIL

// True Copy //

PA to Judge

B. KEMAL PASHA, J.

.....
O.P.(C) No.708 of 2015
.....

Dated this the 17th day of August, 2015

J U D G M E N T

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O.S. No.425/2004 was decreed *ex-parte*. The *ex-parte* decree was sought to be set aside at the instance of additional defendants 2 and 3. The 1st defendant is no more. According to them, the 1st defendant was conducting the suit and it happened to be decreed *ex-parte*. The additional 3rd defendant had averred in the affidavit in support of the IA that they came to know about the suit on 02.06.2010. Through Ext.P5 order, the court below has found that the suit was decreed on 24.05.2010 and, therefore, there was no occasion for the Commissioner to visit the property on 02.06.2010 and, therefore, the

averment made in the affidavit is false. It was on that ground that Ext.P3 IA was dismissed.

2. Heard learned counsel for the petitioners and learned counsel for the respondents.

3. It has come out that Ext.P3 IA was filed in time without any delay. In such case, the date of knowledge does not assume any importance at all. In normal course, the court below ought to have allowed the IA on terms. By highlighting the fact that a false statement has been made in the IA, it was dismissed. When the IA was filed in time, this Court is satisfied that the same can be allowed on terms. Even though Ext.P5 order was challenged before the appellate court, the challenge was unsuccessful and CMA NO.120/2011 was dismissed through Ext.P6 judgment.

In the result, this O.P.(Civil) is allowed and Exts.P5 and P6 orders stand set aside. Ext.P3 IA stands allowed. The *ex-parte* decree has been set aside on condition that the petitioners shall pay an amount of ₹2,000/- as costs to the

OPC.708/2015

: 3 :

learned counsel for the respondents within ten days from today. The court below shall expedite the disposal of the suit as the suit being one of 2004. If the cost is not paid as ordered, this O.P.(Civil) will stand dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/17/08

// True Copy //

PA to Judge