

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

OP(C).No. 764 of 2015 (O)

OS 128/2013 OF MUNSIF MAGISTRATE COURT, ERATTUPETTA
.....

PETITIONER(S):

**FRANCIS BABY @ BABYCHAN,
S/O. KURIAKOSE, PARAPLACKAL HOUSE, KAYYOOR KARA,
BHARANANGANAM VILLAGE, MEENACHIL TALUK.**

**BY ADVS.SRI.MATHEW JOHN WWW
SRI.DOMSON J.VATTAKUZH**

RESPONDENT(S):

**ANCY JOJO,
W/O. JOJO, THUDIYANPLACKAL HOUSE,
KIZHATHADIYOOR KARA,
LALAM VILLAGE, MEENACHIL TALUK.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 764 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1- A TRUE COPY OF THE PLAINT IN O.S.NO. 215 OF 2011 DATED 2-12-2011
FILED BY THE PETITIONER BEFORE THE MUNSIFF'S COURT,
ERATTUPETTA.**

**EXHIBIT P2- A TRUE COPY OF THE PLAINT IN O.S.NO. 128 OF 2013 FILED BY THE
RESPONDENT BEFORE THE MUNSIFF'S COURT, ERATTUPETTA.**

**EXHIBIT P3- A TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 1-11-2014 BY
THE PETITIONER FOR STAY.**

**EXHIBIT P4- A TRUE COPY OF THE OBJECTION DATED 10-12-2014 BY THE
RESPONDENT.**

**EXHIBIT P5- A TRUE COPY OF THE ORDER IN I.A.NO. 1086 OF 2014 IN O.S.NO. 128 OF
2013 DATED 17-1-2015.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. ABRAHAM MATHEW, J.

O.P.(C)No.764 of 2015

Dated this the 3rd day of December, 2015

J U D G M E N T

The petitioner and the respondent are brother and sister. He is the plaintiff in OS.215 of 2011 of Munsiff Court, Erattupetta. He claims that the plaint schedule property was allotted to him at the partition effected in his family in 2008. But his mother executed a document cancelling the allotment and executed a deed making a gift of the property to the respondent. The prayer in the suit is to declare his title and to set aside the cancellation deed and the gift deed. The suit was dismissed. AS.93 of 2014 filed by him is pending before Sub Court, Pala. Before the disposal of the suit the respondent had filed OS.128 of 2013 in Munsiff Court, Erattupetta to declare her title to the plaint schedule property, to fix its boundaries and for a perpetual injunction. The petitioner filed IA.1086 of 2014 under Section 10 CPC to stay the trial of the suit till disposal of the appeal filed by him. This has been dismissed by the learned Munsiff. This is challenged.

2. Heard.

3. In the first suit it was the petitioner's title that was in issue. While in the second suit it is the respondent's title. But the field of controversy is the same. In both suits what is agitated is title to the same property. In these circumstances it is only proper that the trial of the subsequent suit is stayed under Section 151 CPC. The impugned order is liable to be set aside.

In the result, this OP is allowed. The impugned order is set aside. Trial of OS.128 of 2013 on the file of Munsiff, Erattupetta is stayed till the disposal of AS 93 of 2014 of Sub Court, Pala. It is made clear that what is stayed is only trial and there is no impediment for the parties taking other steps in the suit.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge