

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

OP(C).No. 766 of 2015 (O)

IN OS 439/2012 of PRINCIPAL SUB COURT, ALAPPUZHA

PETITIONER(S) :

VENUGOPALAN UNNI,
S/O.RAGHAVA KARTHAVU, AGRICULTURIST, AGED 59 YEARS,
RESIDING AT ARACKAL KIZHAKKEKOOTTU MADOM,
CHARAMANGALAM MURI OF KANJIKKUZHI VILLAGE,
MAYITHARA MARKET P.O., CHERTHALA.

BY ADVS.SRI.T.JAYAKRISHNAN &
SRI.R.KRISHNAKUMAR (CHERTHALA) .

RESPONDENT(S) :

P. RAJENDRAN,
AGED 56 YEARS, S/O.PADMANABHAN,
RETIRED BSNL EMPLOYEE, SANDRAM,
PERUMTHURUTHU MURI OF THANNERMUKKAM SOUTH VILLAGE,
MUHAMMA PO, ALAPPUZHA - 688 525.

BY ADV. SRI.K.R.GANESH &
BY ADV. SRI.ARAVINDA KUMAR BABU T.K.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT P1 : A TRUE COPY OF IA.NO.595/2014 DT.07-06-2014 IN OS.NO.439/2012 OF SUB COURT, ALAPPUZHA.
- EXT P2 : A TRUE COPY OF IA.NO.596/2014 DT. 07-06-2014 IN OS.NO.439/2012 OF SUB COURT, ALAPPUZHA.
- EXT P3 : A TRUE COPY OF ORDER PASSED IN IA.NO.595/2014 DT. 11-11-2014.
- EXT P4 : A TRUE COPY OF IA.NO.112/2015 SEEKING RESTORATION OF IA.NO.595/2014 IN OS.NO.439/2012 DT 28-01-2015.
- EXT P5 : A TRUE COPY OF IA.NO.113/2015 SEEKING RESTORATION OF IA.NO.596/2014 IN OS.NO.439/2012 DT.28-01-2015.
- EXT P6 : A TRUE COPY OF ORDER PASSED IN IA.NO.112/2015 DT 13-02-2015.
- EXT P7 : A TRUE COPY OF ORDER PASSED IN IA.NO.113/2015 IN OS.NO.439/2012 DT. 13-02-2015.
- EXT P8 : A TRUE COPY OF IA.NO.308/2015 DT. 18-03-2015 SEEKING RESTORATION OF EXT P4 AND P5 APPLICATIONS IN OS.NO.439/2012.
- EXT P9 : A TRUE COPY OF IA.NO.309/2015 DT. 18-03-2015 SEEKING STAY OF DELIVERY OF PROPERTY IN OS.439/12.
- EXT P10 : THREE PHOTOGRAPHS CLEARLY SHOWING THE "NALUKETTU" HOUSE OF THE PETITIONER.

RESPONDENT(S) ' EXHIBITS :

- EXT R1(A) : TRUE COPY OF THE SALE DEED NO.1712/2007 OF SRO/PUTHENAMBALAM DATED 24/09/2007.
- EXT R1(B) : TRUE COPY OF THE AGREEMENT FOR SALE DATED 03/11/2010.
- EXT R1(C) : TRUE COPY OF THE PLAINT IN OS NO.439/2012.
- EXT R1(D) : TRUE COPY OF THE JUDGMENT DATED 22/07/2013 IN OS 439/2012 IN THE FILE OF THE SUB COURT, ALAPPUZHA.
- EXT R1(E) : TRUE COPY OF THE DECREE DATED 22/07/2013 IN OS NO.439/2012.
- EXT R1(F) : TRUE COPY OF THE IA NO.1120/2013 IN OS NO.439/2012.
- EXT R1(G) : TRUE COPY OF THE OBJECTION DATED 07/06/2014 FILED BY THE DEFENDANT IN IA NO.1120/2013.

- EXT R1 (H) : TRUE COPY OF STATEMENT OF OBJECTION DATED 12/06/2014 FILED BY THE RESPONDENT IN IA NO.595/2014.
- EXT R1 (I) : TRUE COPY OF STATEMENT OF OBJECTION DATED 12/06/2014 FILED BY THE RESPONDENT IN IA NO.596/2014.
- EXT R1 (J) : TRUE COPY OF THE SALE DEED NO.102/2015 OF SRO/PUTHENAMBALAM IN THE NAME OF RESPONDENT HEREIN DATED 20/01/2015.
- EXT R1 (K) : TRUE COPY OF THE RECEIPT DATED 23/01/2015 FOR PAYMENT OF REGISTERED FEED BY THE RESPONDENT.
- EXT R1 (L) : A TRUE COPY OF STATEMENT OF OBJECTION IN IA 112/2015.
- EXT R1 (M) : A TRUE COPY OF THE STATEMENT OF OBJECTION IN IA 113/2015.

/TRUE COPY/

P.A.TO JUDGE

RVS.

B. KEMAL PASHA, J.

.....
O.P.(C) No.766 of 2015
.....

Dated this the 29th day of July, 2015

J U D G M E N T

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A suit for specific performance was filed by the respondent before the court below. Ultimately, an *ex-parte* decree was passed on 22.07.2013. The petitioner filed an application under Order IX Rule 13 CPC on 07.06.2014. It seems that the said application was also dismissed for non prosecution on 11.11.2014 through Ext.P3 order. Again, the petitioner filed Ext.P4 application for getting Ext.P1 application restored. It seems that the said application was also dismissed for non prosecution, on 13.02.2015 through Ext.P6 order. Once again, Ext.P8 application was filed for getting Ext.P4 application restored.

2. As ordered by the court below, the entire balance consideration was deposited by the respondent and an application was filed under Section 28(3) of the Specific

Reliefs Act. The same was allowed. Registration charges were also paid and the sale deed was registered in favour of the respondent. The decree was put in execution and delivery was sought for. It was at the time of delivery, that all the aforesaid exercises were done by the petitioner. There is culpable negligence from the part of the petitioner. The above facts are self speaking. The petitioner is not entitled to get any relief sought for from this Court through this OP (Civil). This OP(Civil) is devoid of merits and it is only to be dismissed, and I do so.

In the result, this O.P.(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/29/07

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PA to Judge