

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

OP(C).No. 1135 of 2015 (O)

EA.44/2014 IN EP.39/2012 IN LAR 16/2006 OF SUB COURT, KASARAGOD.
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PETITIONERS/RESPONDENTS/CLAIMANTS:

- 1. K.KUNHIKANNAN, S/O.LATE RAMAN,
RESIDING AT THOTTIYIL HOUSE
KALANAD VILLAGE, P.O.UDUMA,
KASARAGOD DISTRICT.**
- 2. K.NANDANAN, S/O.LATE KRISHNAN,
RESIDING AT THOTTIYIL HOUSE
KALANAD VILLAGE, P.O.UDUMA,
KASARAGOD DISTRICT.**

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S)/RESPONDENTS:

- 1. THE SPECIAL TAHSILDAR (LA)
KASARAGOD - 671 121.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION,
KASARAGOD - 671 121.**
- 3. THE DEPUTY CHIEF ENGINEER,
SOUTHERN RAILWAY, KANNUR - 670 001.**

BY GOVERNMENT PLEADER SRI.C.K.JAYAKUMAR

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 25-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1135 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1. THE TRUE COPY OF THE JUDGMENT IN LAR.NO.16/2006 ON THE FILE OF SUBORDINATE JUDGE, KASARAGOD.

EXHIBIT P2. THE TRUE COPY OF THE JUDGMENT IN E.A.NO.44/2014 IN E.P.NO.39/2012 IN LAR NO.16/2006 ON THE FILE OF SUBORDINATE JUDGE, KASARAGOD.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. ABRAHAM MATHEW, J.

O.P.(C)No.1135 of 2015

Dated this the 25th day of September, 2015

J U D G M E N T

Petitioners were the claimants in LAR.No.16 of 2006. Under a will the property which was acquired has been bequeathed to them with a condition that they shall appropriate the income for supplying butter milk to the devotees of a temple during annual festival. So the reference court in its award directed that the enhanced compensation shall be deposited in a bank and the petitioners could withdraw the amount only for acquiring properties for the said purpose. But without acquiring any property they withdrew the amount. By Ext.P2 order the learned Sub Judge has directed them to deposit the amount and produce the fixed deposit receipt in court. This is sought to be challenged.

2. Heard.

3. The learned counsel submits that the petitioners have constructed a building in the property that remained with them after the acquisition and the income from the building will be utilised for the purpose mentioned in the

will. I am satisfied that they should not have withdrawn the amount suppressing the fact that they were allowed to withdraw it only for acquiring property. Still if their case that they have already constructed a building and there is rent from it the learned Sub Judge can take notice of it.

In the result Ext.P2 order is set aside. The petitioners are allowed to prove that they have spent the whole amount withdrawn from the court for construction of the building in the property that remains with them after the acquisition. They shall make an undertaking in the form of an affidavit that the income from it will be utilised only for the purpose mentioned above. If they fail to prove it they shall re-deposit the whole amount, or part of it, as the case may be, for which the learned Sub Judge shall take appropriate steps.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge