

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

OP(C) .No. 1189 of 2015 (O)

IN IA NO. 219/2015 IN AS 85/2014 of SUB COURT, PERUMBAVOOR

PETITIONER(S) :

SUKUMARAN KARTHA,
AGED 71 YEARS,
S/O.BHAVANIKUNJAMMA, CHATHININGATHU PUTHEN BHAVANAM,
VELOOR KARA, PUTHENCROUZ VILLAGE,
KUNNATHUNADU TALUK.

BY ADVS.SRI.SABU FRANCIS
SRI.SAJI MATHEW (KOOTHATTUKULAM)
SRI.JOHN V.VARGHESE.

RESPONDENT(S) :

THANKAMANI ANTHARJANAM,
AGED 59 YEARS, W/O.SUKUMARAN KARTHA,
CHATHININGATHU PUTHEN BHAVANAM,
VELOOR KARA, PUCHENCROUZ VILLAGE, KUNNATHUNADU TALUK,
NOW RESIDING AT VALAMATTATHU ELLAM, INCHOOOR KARA,
KOZHIPPILLY P.O., VARAPETTY VILLAGE,
KOTHAMANGALAM TALUK, PIN 686 691.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
25-05-2015, ALONG WITH OPC NO.1195/2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF THE PARTITION DEED NO.1940/84 DATED 17.5.1984 OF THE SRO PUTHENCROUZ IN FAVOUR OF THE PETITIONER.

EXHIBIT-P2: TRUE COPY OF THE PLAINT FILED BY THE RESPONDENT AGAINST THE PETITIONER DATED 20.05.2013.

EXHIBIT-P3: TRUE COPY OF THE SETTLEMENT DEED NO.652/90 DATED 16.2.1990 EXECUTED BY THE PETITIONER IN FAVOUR OF THE RESPONDENT.

EXHIBIT-P4: TRUE COPY OF THE MEMORANDUM OF APPEAL A.S.NO.85/14 FILED BY THE PETITIONER BEFORE THE SUB COURT, PERUMBAVOOR DATED 24.10.2014.

EXHIBIT-P5: TRUE COPY OF THE AMENDMENT PETITION I.A.NO.219/2015 IN A.S.NO.85/14 FILED BY THE PETITIONER DATED 25.2.2015.

EXHIBIT-P6: TRUE COPY OF THE OBJECTION TO I.A.219/15 FILED BY THE RESPONDENT DATED 9.3.2015.

EXHIBIT-P7: TRUE COPY OF THE ORDER PASSED BY THE SUB JUDGE, PERUMBAVOOR ON I.A.219/15 DATED 23.3.15.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

B.KEMAL PASHA, J.

.....
O.P.(C) Nos.1189 & 1195 of 2015
.....

Dated this the 25st day of May, 2015

J U D G M E N T

Petitioner is the judgment debtor in O.S.No.154/2013 of the Munsiff's Court, Perumbavoor. The suit is one for declaration and injunction. The plaintiff claimed that the plaint schedule property was settled in her favour by the present petitioner who is none other than her husband. Their relationship strained as the petitioner had relation with another woman. Presently, he is residing with another lady who is styled as his second wife. After the judgment and decree, the petitioner has filed A.S.No.85/2014 before the Sub Court, Perumbavoor, challenging the judgment and decree, which is still pending. In the appeal, I.A.219/2015 was filed thereby seeking a series of amendments to the appeal memorandum alone and not the pleadings. It seems

that the amendments sought for have not been taken up as contentions in the written statement. Still there is no attempt to get the written statement amended. Whereas, the attempt is only to get the appeal memorandum amended for incorporating new grounds, which do not find a place in the written statement. The same cannot be permitted. It seems that the court below has rightly dismissed the said I.A.

2. The petitioner has filed another suit claiming that he had originally 50 cents of property out of which the document in favour of the plaintiff in O.S.154/2013 is with regard to 41 cents only, and even then, the court below had passed a decree in favour of the plaintiff in O.S.154/2013 for the whole property overlooking the contents of the document. Presently, this Court is not expressing any opinion with regard to the maintainability or otherwise of the suit. It seems that the averments in the plaint filed in O.S.72/2015 of the court below do not find a place in the written statement filed in the other suit. The said contentions

were not taken up. It seems that in E.P.63/2014, the petitioner has filed E.A.37/2015 for getting the execution stayed on the ground that the other suit with regard to the declaration of his title is pending before that court. It seems that in the appeal, an IA was filed for staying the execution. The said IA was dismissed. Challenging the said order, another OP(C).44/2015 was filed before this Court. The said OP was dismissed. Presently, there is no valid ground at all to seek for stay of execution of the decree in O.S.154/2013. Therefore, there is no merit in these Original Petitions challenging the aforesaid orders. Matters being so, O.P.(C) Nos.1189 & 1195 of 2015 are only to be dismissed, and I do so..

In the result, these Original Petitions are dismissed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge