

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

OP(C).No. 1289 of 2015 (O)

(I.A.NO.2241/2015 IN O.S.NO.391/2012 OF PRINCIPAL MUNSIF COURT-II, KOZHIKODE)

PETITIONER(S):

- 1. MULLERI BALAKRISHNAN NAIR,
AGED 84 YEARS, SON OF RAMAN NAIR.**
- 2. PANKAJAKSHI AMMA, AGED 71 YEARS,
WIFE OF MULLERI BALAKRISHNAN NAIR.**
- 3. DIVYA SREE, AGED 39 YEARS,
DAUGHTER OF MULLERI BALAKRISHNAN NAIR.**
- 4. DHANYA, AGED 36 YEARS,
DAUGHTER OF MULLERI BALAKRISHNAN NAIR.**
- 5. AISWARYA, AGED 33 YEARS,
DAUGHTER OF MULLERI BALAKRISHNAN NAIR,
THE PETITIONERS ARE RESIDING IN MULLERI HOUSE,
PAYYADITHAZHAM, PERUMANNA AMSOM, PUTHUR DESOM,
KOZHIKODE TALUK.**

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT :

**M.UNNIKRISHNAN NAIR, AGED 58 YEARS,
SON OF NARAYANI AMMA, ARAMBACHALIL HOUSE,
PERUMANNA AMSOM PUTHUR DESOM,
KOZHIKODE TALUK- 678 001.**

**BY ADVS. SRI.R.SUDHISH
SMT.M.MANJU**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 1289 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE PLAINT FILED IN O.S.NO.391 OF 2012 BEFORE THE PRINCIPAL MUNSIF-II, KOZHIKODE.
- P2 - TRUE COPY OF THE WRITTEN STATEMENT FILED IN O.S.NO.391 OF 2012 BEFORE THE PRINCIPAL MUNSIF-II, KOZHIKODE.
- P3 - TRUE COPY OF THE AFFIDAVIT AND PETITION FILED IN I.A.NO.2241 OF 2015 FILED IN O.S.NO.391 OF 2012.
- P4 - TRUE COPY OF THE COUNTER STATEMENT FILED BY THE RESPONDENT IN I.A.NO.2241 OF 2015 FILED IN O.S.NO.391 OF 2012.
- P5 - TRUE COPY OF THE ORDER DATED 26.5.20-15 OF PRINCIPAL MUNSIF-II, KOZHIKODE DISMISSING THE I.A.NO.2241 OF 2015 FILED IN O.S.NO.391 OF 2012.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. ABRAHAM MATHEW, J.

O.P.(C)No. 1289 of 2015

Dated this the 8th day of October, 2015

J U D G M E N T

Petitioners are the plaintiffs in O.S.No.391 of 2012 on the file of Munsiff Court-V, Kozhikode. The suit is for temporary injunction based on possession. When the suit came up for trial in list they filed Ext.P3 application to amend the plaint incorporating the plea that there was an agreement between the parties to convey the property to the petitioners and they are ready to give the respondent/defendant Rs.5,50,000/- (Rupees five lakhs fifty thousand only) with interest that may be fixed by the court and the respondent may be directed to execute a sale deed in their favour. By Ext.P4 order the learned Munsiff has dismissed it.

2. Heard.

3. There is no clarity in the amendment sought to be made. There is no specific averment that there was an agreement for sale between the parties to the effect that on payment of particular amount as consideration the respondent/defendant would execute a sale deed in favour

of the petitioners/plaintiffs. What is stated is that there was an understanding to pay Rs.5,50,000/- (Rupees five lakhs fifty thousand only). The petitioners have expressed readiness to pay that amount with interest that may be fixed by the court. The amendment will alter the nature and character of the suit. I am of the opinion that the learned Munsiff was justified in dismissing the application.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge