

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP(C).No. 1355 of 2015 (O)

PETITIONER(S):

**K.ALEXANDER, AGED 64 YEARS,
S/O.MR.M.E.KURUVILLA,
MANALIL HOUSE, CHEKALAMUKKU, SREEKARIYAM P.O.
TRIVANDRUM.**

**BY ADVS.SRI.SUKUMAR NAINAN OOMMEN
SRI.SHERRY SAMUEL OOMMEN
SMT.AMALA EDWARD
SRI.P.RAVINDRA NATH**

RESPONDENT(S):

- 1. SHEEBA BIJI,
AGED ABOUT 54 YEARS, W/O.MR.BIJI ABRAHAM,
RAJAGIRI VEETIL, KURUVANMOOZHI P.O., KOTTAYAM-586 509.**
- 2. MIDUNA B.ABRAHAM,
AGED ABOUT 30 YEARS, D/O.MR.BIJI ABRAHAM,
RAJAGIRI VEETIL, KURUVANMOOZHI P.O., KOTTAYAM-586 509.**
- 3. BIJI ABRAHAM,
AGED ABOUT 61 YEARS, S/O.MR.ABRAHAM, RAJAGIRI VEETIL,
KURUVANMOOZHI P.O., KOTTAYAM-586 509.**
- 4. SABARI HOMES,
PARTNERSHIP FIRM BEARING NO.1065/05 REPRESENTED
BY MR.BIJI ABRAHAM,
MANAGING PARTNER RAJAGIRI VEETIL, KURUVANMOOZHI P.O.
KOTTAYAM-586 509.**

BY ADV.SRI.MOHAN JACOB GEORGE

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015, ALONG
WITH OPC. 1356/2015 AND CONNECTED CASES, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 1355 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1- TRUE COPY OF THE I.A 783/2011 IN O.S 169/2010 AND 785/2011 IN O.S 169/2010.**
- EXHIBIT-P2- TRUE COPY OF THE I.A 1371/2011 IN O.S 167/2011.**
- EXHIBIT-P3- TRUE COPY OF THE I.A 2021/2013 IN O.S 169/2010 AND THE OBJECTION FILED THEREIN BY MR.K.V. VARGHESE.**
- EXHIBIT-P4- TRUE COPY OF THE I.A 575/2014 IN O.S 167/2011 AND THE OBJECTION FILED THEREIN.**
- EXHIBIT-P5- TRUE COPY OF THE ORDERS ON 09/04/2015 OF HONOURABLE VACATION JUDGE OF THIS HONOURABLE COURT IN O.P (C) 1041/2015 IN O.S 167/2011 AND O.P (C) 1042/2015 IN O.S 168/2011.**
- EXHIBIT-P6- TRUE COPY OF THE I.A 598/2015 IN O.S 167/2011 (RE-NUMBERED AS I.A 382/2015 IN O.S 167/2011) AND THE OBJECTION FILED THEREIN FILED BY THE PETITIONER.**
- EXHIBIT-P7- CERTIFIED COPY OF THE ORDER DATED 01/06/2015 OF THE LEARNED SUB JUDGE, PALA IN I.A 382/2015 IN O.S 167/2011.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(C) Nos.1355, 1356, 1385
& 1386 of 2015
.....

Dated this the 22nd day of June, 2015

J U D G M E N T

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There was an order of conditional attachment of the properties of defendants 1 to 3 in the suits before the court below. Subsequently, the suits as against defendants 2 and 3 in all the suits, have been dismissed. The said suits as against the 1st defendant alone were decreed. In the matter relating to O.P. (C) Nos.1385/2015 and 1386/2015, the court below has passed Ext.P5 common order, whereby the attachment over the properties of the petitioners, who are defendants 2 and 3 in those suits has been lifted. The court below has ordered the communication of the lifting of the order of attachment to the concerned Sub Registry vide Ext.P5 order. It seems that the court below has not communicated the order so far. The court below is directed to communicate the said order forthwith on getting a copy of this judgment.

2. In O.P.(C) Nos.1355/2015 and 1356/2015, what is challenged is the aforesaid common order by which the order of attachment over the properties of defendants 2 and 3 has been lifted. The said order has been passed under Order XXXVIII Rule 9 of the Code of Civil Procedure, 1908. Admittedly, there is no decree as against respondents 1 and 2, who are defendants 2 and 3. So long as there is no decree against them, the order of conditional attachment passed as against their properties has to be lifted under Order XXXVIII Rule 9 of the Code of Civil Procedure, 1908. I do not find any merit in O.P.(C) Nos.1355/2015 and 1356/2015.

In the result, O.P.(C) Nos.1385/2015 and 1386/2015 are allowed and O.P.(C) Nos.1355/2015 and 1356/2015 are dismissed, as above. The interim orders in these matters have been vacated.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/22/06

// True Copy //

PA to Judge