

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. 1440 of 2015 (O)

IA.702/2013 IN A.S.NO.27/2013 OF SUB COURT, OTTAPALAM.
.....

PETITIONER(S):

- 1. KUTTISANKARA GUPTAN,
S/O.VALAPPILTHODI VEETIL APPU GUPTAN,
AGED 70 YEARS, KADAMPAZHIPURAM AMSOM
AND DESOM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.**
- 2. SREEKANTH, S/O.KUTTISANKARA GUPTAN,
KADAMPAZHIPURAM AMSOM AND DESOM,
OTTAPALAM TALUK, PALAKKAD DISTRICT.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT:

**SIVASANKARAN,
S/O.KAPPIL VEETIL NARAYANA THARAKAN,
AGED 53 YEARS, PARASSERY,
PERINGODE AMSOM AND DESOM,
PALAKKAD TALUK AND DISTRICT - 678 001.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 22-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1440 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : TRUE COPY OF THE DECREE IN OS.NO.436/2011 DATED 19-1-2013 PASSED BY THE MUNSIFF COURT, OTTAPALAM.
- P2 : TRUE COPY OF THE AFFIDAVIT AS IA.NO.702/2013 IN AS.NO.27/2013 FILED IN THE SUBORDINATE JUDGE'S COURT, OTTAPALAM.
- P3 : TRUE COPY OF THE OBJECTIONS TO EXT P2.
- P4 : TRUE COPY OF THE ORDER DATED 27-3-2015 PASSED BY THE SUB COURT, OTTAPALAM IN IA.NO.702/2013 IN AS.NO.27/2013.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

B.KEMAL PASHA, J.

.....
O.P.(C) No.1440 of 2015
.....

Dated this the 22nd day of June, 2015

J U D G M E N T

Ext.P4 is under challenge. A money decree has been passed, against which an appeal has been filed as A.S.27 of 2013. In the said appeal, IA 702/2013 was filed seeking the stay of the execution proceedings. Even though it is a money decree, it seems that the court below has passed Ext.P4 order as against the statutory provisions contained under Order XLI Rule 5(3)(c) of the Code of Civil Procedure, 1908. Ext.P4 order is illegal and is liable to be set aside.

In the result, this Original Petition is allowed. Ext.P4 order is set aside. The court below is directed to pass an order in accordance with law, as contemplated under Order

O.P.(C) 1440 of 2015

-: 2 :-

XLI Rule 5(3)(c) of CPC by directing the appellants to furnish security for the decree amount.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge