

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

OP(C) .No. 3745 of 2013 (O)

(AGAINST THE ORDER DATED 19.10.2013 IN I.A.NO.3438/2013 IN
O.S.NO.412/2010 ON THE FILE OF THE COURT OF THE PRINCIPAL
SUBORDINATE JUDGE, PALAKKAD)

PETITIONER(S)/RESPONDENT/PLAINTIFF:

P.M SIRAJUDHEEN AGED 30 YEARS
S/O.MUHAMMED, RESIDING AT P.P.HOUSE, KUNNANNUR AMSOM
PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.BINOY VASUDEVAN
SRI.R.MANIKANTAN
SMT.P.G.BABITHA

RESPONDENT(S)/PETITIONERS/DEFENDANTS:

1. MANOJ KUMAR, AGED 36 YEARS
S/O.KRISHNAN, RESIDING AT UDHAVAKKAD
PALLATHERI P.O., PIN- 678 007,
ELAPPULLI AMSOM, NIRAVAKOTTIL
PALAKKAD TALUK, PALAKKAD DISTRICT.
2. P.P.NEEMA, AGED 30 YEARS
W/O.MANOJ KUMAR, RESIDING UDHAVAKKAD
PALLATHERI P.O., PIN- 678 007,
ELAPPULLI AMSOM, NIRAVAKOTTIL
PALAKKAD TALUK, PALAKKAD DISTRICT.

R-R BY ADV. SRI.K.MANOJ CHANDRAN
R-R BY ADV. SRI.P.R.AJITHKUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 3745 of 2013 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: COPY OF THE PLAINT IN O.S.NO.412/2010.

EXHIBIT-P2: COPY OF THE WRITTEN STATEMENT DATED 24.02.2011
FILED BY THE RESPONDENTS.

EXHIBIT-P3: COPY OF I.A.NO.3438/2013 PREFERRED BY THE
DEFENDANTS.

EXHIBIT-P4: COPY OF THE OBJECTION/COUNTER STATEMENT PREFERRED
BY THE PETITIONER.

EXHIBIT-P5: COPY OF THE ORDER DATED 18.10.2013 IN
I.A.NO.3438/2013.

EXHIBIT-P6: COPY OF THE MEMO EVIDENCING PAYMENT OF COSTS.

EXHIBIT-P4: COPY OF THE ORDER DATED 19.10.2013 IN
I.A.NO.3438/2013.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE.

jg-20/10

THOTTATHIL B.RADHAKRISHNAN, J.

OP(C) No.3745 of 2013

Dated this the 16th day of September, 2015

J U D G M E N T

- 1.This original petition under Article 227 of the Constitution of India is instituted by the plaintiff in a suit for specific performance of a contract for sale.
- 2.Heard the learned counsel for the petitioner–plaintiff and the learned counsel for the respondents–defendants.
- 3.In answer to the suit, the defendants raised contentions against the plea for specific performance. The case was listed for trial. When the matter came up for trial, the defendants applied for leave to amend the written statement. I have gone through the amendment that was sought for. Apart from some of the clerical errors, which were sought to be corrected, the main thrust of the averments was to introduce specific particulars regarding grounds under which the defendants would urge that the discretionary remedy by way of specific performance may

be reduced. The family background of the defendants, their financial status, their requirement to save the property from the contract for sale that is sought to be enforced, and other relevant particulars, are sought to be incorporated. The amendment also sought to incorporate a plea enlarging one of the denials levied in the written statement. Obviously, the matters sought to be incorporated through amendment did not amount to withdraw any admission already made in the written statement. Not only that, though an admission can also be withdrawn with proper explanation, amendments sought to be brought in were only for enlarging the scope of particulars relating to the defence that was set up in answer to the suit for specific performance. The court below exercised discretion and granted leave to amend the written statement on terms. The costs ordered were accepted by the plaintiff under protest.

4. Having considered the relevant materials as noted above and taking note of the nature of the litigation and the plea raised in defence, I am of the view that the decision of the court below

granting leave to amend the written statement on terms does not merit interference under Article 227 of the Constitution of India. This original petition, therefore, fails.

In the result, this original petition is dismissed.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

jj-16/9