

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

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

OP(C).No. 1519 of 2015 (O)

**AGAINST THE ORDER IN IA NO. 4715/2014 IN FDIA 5214/2013 IN OS NO. 505/2012
OF MUNSIFF COURT, KANNUR**

PETITIONER/PLAINTIFF :

**MOWERI MOHANAN,
AGED 65 YEARS, S/O.M.RAMAN, RESIDING AT AISWARYA
PANANKAVU, P.O.CHIRAKKAL, KANNUR DISTRICT.**

**BY ADVS.SRI.T.K.VIPINDAS
SMT.PREM BINDU T.K.
SRI.K.V.SREEVINAYAKAN
SRI.K.M.MUHAMMED HUSSAIN**

RESPONDENT/4TH DEFENDANT :

**MOWERI VENUGOPALAN
AGED 69 YEARS, S/O.M.RAMAN, MOWERI HOUSE
NEAR PUTHIYATHERU, MANDAPAM,
CHIRAKKAL AMSOM DESOM
KANNUR DISTRICT, PIN-670 011.**

BY ADV. SRI. P.U. SHAILAJAN

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

Mn

...2/-

OP(C).No. 1519 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1: TRUE COPY OF THE JUDGMENT IN OS.NO. 505/2012 DATED 10/10/2013
ON THE FILE OF MUNSIFF'S COURT, KANNUR.

EXT. P2: TRUE COPY OF THE APPLICATION AS IA.NO. 4715/2014
IN FDIA 5214/2013.

EXT. P3: TRUE COPY OF THE ORDER IN IA 4715/2014 IN FDIA 5214 OF 2013 IN
OS NO.505/2012 ON THE FILE OF MUNSIFF'S COURT, KANNUR.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. ABRAHAM MATHEW, J.

O.P.C.No.1519 of 2015

Dated this the 16th day of September, 2015

J U D G M E N T

Petitioner is the plaintiff in O.S.No.505 of 2012 on the file of Munsiff, Kannur and the respondent is the fourth defendant.

The suit was for partition. Preliminary decree has been passed. It is challenged in AS.No.73 of 2013 on the file of Sub Court, Kannur. Meanwhile the petitioner filed IA.No.5214 of 2013 for passing final decree. Thereafter, he filed IA.No.4715 of 2014 under Section 151 CPC for a direction to break open the lock of the building in the plaint schedule property to prepare the valuation of the building. The building is in the possession of the respondent. The learned Munsiff dismissed it by Ext.P3 order on the ground that neither party produced the order of stay issued by appellate court.

2. Heard the learned counsel on either side.
3. The rule is that if the proceedings is not

stayed by the appellate court the trial court can proceed with it. The burden is on the person who alleges that there is a stay to produce it. So the respondent should have produced the order of stay. The learned Munsiff should not have dismissed the application on the ground that the petitioner did not produce the copy of the stay order.

4. It is submitted that the order passed by the appellate court only prevents passing of the final decree. If that is true, the trial court shall proceed with the final decree application except passing the final decree. The respondent was bound to open the building for the commissioner is to ascertain its value. As that was not done, the Munsiff should have authorised the commissioner to break open the lock and re-lock it and produce the key before the court. That has not been done. So I am inclined to allow the prayer in this O.P.

In the result, Ext.P5 order is set aside. The commissioner will issue notice to the parties for inspection on a particular date at a particular time. If the respondent does not keep the building open, the learned Munsiff shall empower the commissioner to break open the lock and

after the work is over to re-lock and produce the key before the court.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge