

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

OP(C).No. 1540 of 2015 (O)

OS 664/2008 OF ADDITIONAL SUB COURT, KOTTAYAM.
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PETITIONER/DEFENDANT:

**REGHUNATHA PRASAD @ REGHU
@ JAGANATHA PRASAD, AGED 52 YEARS,
S/O.LATE C.SAHADDEVAN, RESIDING AT C.S.SADANAM,
T.B.ROAD, KODIMATHA KARA, KOTTAYAM VILLAGE,
KOTTAYAM.**

BY ADV. SRI.THIRUMALA P.K.MANI

RESPONDENT(S)/PLAINTIFFS:

- 1. RAJENDRA PRASAD, AGED 54 YEARS,
S/O.LATE C.SAHADDEVAN, 4-C, CENTURY TOWERS,
NEAR Y.W.C.A., KOTTAYAM-1, NOW RESIDING AT
19 JEEVAN SARTH HOUSING SOCIETY,
OLD PIPELINE ROAD, VAKOLA, SANTACRUZ,
MUMBAI-55.**
- 2. MADHUBALA GOPALAN, AGED 50 YEARS,
W/O.CO.R.P.GOPALAN (RETD) SRIKRISHNANIKETHAN,
NMC NO.IX/501, RAILWAY STATION ROAD,
NEYYATTINKARA, PIN-695 121.**
- 3. SURABALA MURALI, AGED 47 YEARS,
W/O.V.M.MURALI, RESIDING AT VELLAPPALLY BUNGLOW,
PERINNIRMANGALAM KARA, MARARIKULAM (N) VILLAGE,
KANICHUKULANGARA PO, CHERTHALA-688 582.**

**R1 BY ADVS. SRI..DINESH R.SHENOY (CAVEATOR)
SMT.K.K.JYOTHILAKSHMY
SRI.SANIL JOSE**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : TRUE COPY OF THE PLAINT IN OS.NO.664/2008 OF THE ADDITIONAL SUB JUDGE, KOTTAYAM.
- P2 : TRUE COPY OF THE ORDER DATED 27-11-2014 IN IA.NO.1909/2013 IN OS.NO.664/2008 OF THE ADDITIONAL SUB JUDGE, KOTTAYAM.
- P3 : TRUE COPY OF THE INTERIM ORDER DATED 16-12-2014 IN IA.NO.1867/2014 IN FAO NO.356/2014 OF THE HON'BLE HIGH COURT OF KERALA.
- P4 : TRUE COPY OF THE JUDGMENT DATED 6.2.2015 IN FAO.NO.356/2014 OF THE HON'BLE HIGH COURT OF KERALA.
- P5 : TRUE COPY OF THE ORDER DATED 30-5-2015 IN OS.NO.664/2008 OF THE ADDITIONAL SUB JUDGE, KOTTAYAM.
- P6 : TRUE COPY OF THE COMMISSION REPORT DATED 10-4-2015 SUBMITTED IN OS.NO.664/2008 OF THE ADDITIONAL SUB JUDGE, KOTTAYAM.
- P7 : TRUE COPY OF THE RENT DEED DATED 11-5-1983 EXECUTED BY THE MOTHER OF THE PETITIONER LATE SATHYAVATHY.
- P8 : TRUE COPY OF THE DEMAND NOTICE DATED 16-12-2003 ISSUED BY THE KOTTAYAM MUNICIPALITY DEMANDING THE BUILDING TAX.
- P8A : TRUE COPY OF THE BUILDING TAX RECEIPT DATED 19-3-2015 REMITTED TO THE KOTTAYAM MUNICIPALITY BY THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. ABRAHAM MATHEW, J.

O.P.(C)No. 1540 of 2015

Dated this the 12th day of October, 2015

J U D G M E N T

Petitioner is the defendant in O.S.No.664 of 2008 on the file of Additional Sub Judge, Kottayam. He and the other parties to the suit are co-owners of the property which is sought to be partitioned. Preliminary decree was passed. Meanwhile, the petitioner filed FAO.No.356 of 2014. The Division Bench of this court appointed the petitioner receiver as he was said to be in possession of the property. The court directed the learned Sub Judge to fix the monthly 'user fee' which shall be paid by the petitioner as a condition for his continuance in occupation of it. Accordingly, the learned Sub Judge has fixed the 'user fee' at Rs.12,600/- (Rupees twelve thousand six hundred only) per month. This is challenged in this O.P.

2. Heard.

3. The learned counsel for the petitioner submits that the petitioner is only in occupation of a temporary shed and fixing Rs.12,600/- (Rupees twelve thousand six

hundred only) per month is not at all justified. The area occupied by the petitioner is 1260 sq.ft. The property is situated 50 meters from M.C road in Kottayam town, which is a commercially important area. The petitioner's submission that he is in occupation of the temporary shed only is not true as seen from the Commission Report.

4. I have gone through Ext.P5 order. The building occupied by him has an area of 1260 sq.ft. It is just 50 meters from M.C road, which is an arterial road in Kerala. It is very close to KSRTC bus stand and other commercial shops and establishments. The report of the commissioner shows that the rent in that area varies from Rs.10/- to Rs.30/- per sq.ft. The learned Sub Judge has fixed the user fee at Rs.10/- only. By no stretch of imagination it can be said that this is unreasonable. I find no merit in this O.P.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge