

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

OP(C).No. 1749 of 2015 (O)

**I.A.NO.2506/2014 IN O.S.NO.244/2013 OF II ADDITIONAL SUB COURT,
ERNAKULAM**

PETITIONER(S)/DEFENDANT NO.2 :

**A.K.SAKEER, AGED 50 YEARS,
S/O.KAREEM, RESIDING AT CHALAKKARA HOUSE,
THURUTHIPARAMBU, VAZHAKKALA, THRIKKAKARA, KOCHI-21.**

BY ADV. SRI.C.DILIP

RESPONDENT(S)/PLAINTIFF & DEFENDANTS 1 & 3 :

**1. M/S. BENHUR CHITS (P) LTD.,
MAS BUILDING, ERNAKULAM, KOCHI-18,
REPRESENTED BY MR.PRAKASH KUMAR, S/O.BHASKARAN NAIR,
PADINJARE AMBATTU, EDAPPALLY NORTH VILLAGE,
ERNAKULAM DISTRICT.**

*** 2. NISSAR PARAYIL,
S/O.KEN AHAMED HAJI, 43/1367, AMBIKAS,
ERNAKULAM, NORTH, KOCHI-18.(DELETED)**

*** 3. HASEENA NISSAR,
W/O.NISAR, SHALIMAR GARDEN, FLAT NO.G1,
VAZHAKKALA, THRIKKAKARA, KOCHI-21.(DELETED)**

*** RESPONDENTS 2 AND 3 ARE DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE PETITIONER AS PER ORDER DATED 13.10.2015 IN I.A.NO.14475/2015.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP(C).No. 1749 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1 : TRUE PHOTO COPY OF THE JUDGMENT DATED 30-01-2014 IN
O.S.NO.244/2013 ON THE FILE OF II ADDITIONAL SUB COURT,
ERNAKULAM.**
- P2 : TRUE PHOTO COPY OF I.A.NO.2506/2014 IN O.S.NO.244/2013
DATED 20-06-2014 ON THE FILE OF II ADDITIONAL SUB COURT,
ERNAKULAM.**
- P3 : TRUE PHOTO COPY OF ORDER DATED 13-02-2015 IN I.A.NO.2506/2014 IN
O.S.NO.244/2013 ON THE FILE OF II ADDITIONAL SUB COURT,
ERNAKULAM.**
- P4 : TRUE PHOTO COPY OF THE ATTACHMENT SCHEDULE ALONG WITH
REPORT OF ATTACHMENT DATED 16-02-2015 FILED BY THE AMEEN
BEFORE II ADDITIONAL SUB COURT, ERNAKULAM.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K.ABRAHAM MATHEW, J.

O.P.(C). No.1749 of 2015

Dated this the 16th day of October, 2015

JUDGMENT

Petitioner was the 2nd defendant in O.S.No.244 of 2013 on the file of Sub Judge, Ernakulam. The suit was for realisation of money. After the hearing of the suit the respondent/defendant filed I.A.No.2506 of 2014 under Order 38 Rule 5 C.P.C for attachment of immovable properties. It is alleged that attachment order was passed after the decree was passed and it is liable to be set aside.

2. Heard the learned counsel for the petitioner.

3. Records of the case were called for. I have perused the order on I.A.No.2506 of 2014. The order of attachment was passed on 30.1.2015. That is the date on which the decree was passed. So there is no substance in the allegation that the order was passed subsequent to the passing of the decree. But the confusion was caused by the court issuing Ext.P3 notice to the petitioner under Order 38 Rule 5 after passing the decree. The office did not take notice of the fact that it was not a conditional order of attachment. The order was passed after hearing both parties.

In the result, this O.P is dismissed.

**K.ABRAHAM MATHEW
JUDGE**