

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

OP(C).No. 1889 of 2015 (O)

IA.1288/2012 IN OS.NO.41/2014 OF SUB COURT OTTAPALAM.
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PETITIONER:

**M.V. ABOOBACKER, AGED 49 YEARS,
S/O. MUHAMMED, MANGATTUVALAPPIL HOUSE,
ARIYOOR THEKKUMMURI DESOM,
OTTAPALAM - 679 101.**

**BY ADVS.SRI.R.SREEHARI
SRI.M.V.SURESH (KANNUR)
SRI.V.K.SREEJITH**

RESPONDENT(S):

- 1. LAKSHMIKUTTY, 70 YEARS,
W/O. LATE VELAYUDHAN.**
- 2. JAYAPRAKASH, 50 YEARS,
S/O. LATE VELAYUDHAN.**
- 3. JAYAPRASAD, 35 YEARS,
S/O. LATE VELAYUDHAN**
- 4. VIJAYAKUMARI, 43 YEARS,
D/O. VELAYUDHAN, ALL RESIDING AT
VELLIPULAKKAL HOUSE,
ARIYOOR THEKKUMMURI DESOM,
OTTAPALAM AMSOM AND POST, PIN - 679 101.**

**BY ADVS. SMT.M.NEEMA
SRI.P.B.AJOY
SRI.T.M.DOLGOVE**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 06-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1889 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 - PHOTOCOPY OF AGREEMENT FOR SALE DT. 08.6.2013.
- P2 - PHOTOCOPY OF PLAINT IN OS NO. 41/2014 OF SUB COURT, OTTAPALAM.
- P3 - PHOTOCOPY OF DECREE PASSED IN OS NO. 41/2014 OF SUB COURT, OTTAPALAM DT. 23.01.2015.
- P4 - PHOTOCOPY OF RECEIPT DT. 20.3.2015 EVIDENCING PAYMENT OF BALANCE SALE CONSIDERATION.
- P5 - PHOTOCOPY OF AFFIDAVIT AND APPLICATION IA 1039/2015 IN OS NO. 41/2014 OF SUB COURT, OTTAPALAM.
- P6 - PHOTOCOPY OF AFFIDAVIT AND APPLICATION IA 1288/2015 IN OS NO. 41/2014 OF SUB COURT, OTTAPALAM.
- P7 - PHOTOCOPY OF OBJECTION FILED IN IA NO. 1288/2015 IN OS NO. 41/2014 OF SUB COURT, OTTAPALAM.
- P8 - PHOTOCOPY OF THE ORDER IN IA NO. 1288/2015 IN OS NO. 41/2014 OF SUB COURT, OTTAPALAM DT. 16.7.2015.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. ABRAHAM MATHEW, J.

O.P.(C). No. 1889 of 2015

Dated this the 6th day of October, 2015

J U D G M E N T

Petitioner is the plaintiff in O.S.No.41 of 2014 on the file of Sub Judge, Ottapalam. An ex parte decree was passed. The respondent/defendant filed IA.No.1288 of 2015 to set aside the ex parte decree. There was a request to condone the delay of 120 days. BY Ext.P8 order, the learned Sub Judge allowed it on condition that the respondent shall pay Rs.5000/- (Rupees five thousand only) as costs.

2. Heard.

3. Admittedly, no enquiry was conducted by the trial court. It should have posted the case for enquiry. On that ground alone I am inclined to set aside the order.

In the result this O.P is allowed. Ext.P8 order is set aside. The learned Sub Judge is directed to post the IA for enquiry. The trial court shall consider whether the application filed by the petitioner for execution of sale deed shall be kept in abeyance till the disposal of the application to set aside the ex parte decree.

**K. ABRAHAM MATHEW
JUDGE**