

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

OP(C).No. 4523 of 2013 (O)

PETITIONER(S):

**AMRITHAKALA SHETTY AGED 44 YEARS
D/O.RAJEEV SHETTY, R/A.NO 3, 10A
MAIN ROAD, 15TH CROSS, MALLESHWARAM
BANGALORE 55 NOW R/A.NO4 SNN RESIDENCY
NARAYANAPPA LAYOUT, SANJAI NAGAR, BANGALORE -94**

BY ADV. SRI.PBABU KUMAR

RESPONDENT(S):

**GOPALAKRISHNA BHAT, AGED 57 YEARS
S/O.LATE SANKARANA BHAT, HINDU , LANDHOLDER
R/A.AREKKADY HOUSE, KATTUKUKKE P O, KASARAGOD TALUK
KASARAGOD DIST**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 20-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:-TRUE PHOTOCOPY OF THE ORDER IN FINAL DECREE APPLICATION IN OS 43/79 OF THE KASARAGOD SUB COURT DATED 4/9/2003

EXT.P2:-TRUE PHOTOCOPY OF THE JUDGMENT AND DECREE IN OS NO 1/2010 OF THE SUB COURT, KASARAGOD DATED 10/6/2011

P3:-TRUE PHOTOCOPY OF THE EP NO 60/2010 IN OSNO 1/10 FILED BEFORE THE SUB COURT , KASARAGOD DATED 6/6/2012

P4:-TRUE PHOTOCOPY OF THE EA NO 22/12 IN EP NO 60/12 IN OS NO.1/2010 FILED BEFORE THE KASARAGOD SUB COURT DATED 22/1/2013

RESPONDENT'S EXHIBITS:

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

ABRAHAM MATHEW, J.

O.P.(C).No.4523 of 2013

Dated this the 20th day of October, 2015

J U D G M E N T

Petitioner is the decree holder in O.S.43 of 1979 of Sub Court, Kasaragod. The suit was for partition. Final decree has been passed. The petitioner has been allotted his share of property. He has been allowed to recover his share of profit from the co-owners. It is stated that the second respondent in this O.P filed a Collusive suit for recovery of money against the co-owner and obtained a decree and in the execution proceedings in that suit the property of the co-owner is sought to be sold. The petitioner's apprehension is that the object of the co-owner is to deprive him of his right to recover his share of profits.

2. The sale of the property in the execution proceedings will be subject to the right of the petitioner to recover share of profits from the co-owner. The liability is a charge on the property. The right of the petitioner cannot be defeated by the sale of the properties. So her

prayer to quash Ext.P4 notice issued under Order 21 Rule 66 C.P.C in EP.60 of 2012 in O.S. 1 of 2010 filed by the second respondent cannot be allowed.

In the result, this O.P is dismissed.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge

