

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. 1998 of 2015 (O)

**I.A.NO.382 OF 2015 IN I.A.NO.184 OF 2015 IN O.S.NO.10 OF 2015 OF SUB COURT,
MUVATTUPUZHA**

PETITIONER(S)/RESPONDENT 4 & 5 CLAIM PETITIONERS :

- 1. THANKACHAN AGED 58 YEARS, S/O.PAULOSE,
NELLICKAL HOUSE, MUDAVOOR KARA, VELLOORKUNNAM VILLAGE,
MUVATTUPUZHA, ERNAKULAM DISTRICT.**
- 2. DEEPA, AGED 40 YEARS, W/O.THANKACHAN,
NELLICKAL HOUSE, MUDAVOOR KARA, VELLOORKUNNAM VILLAGE,
MUVATTUPUZHA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.ALIAS M.CHERIAN
SRI.U.B.SIRAS**

RESPONDENT(S)/PETITIONERS & RESPONDENTS 1 TO 3 :

- 1. P.C.VARGHESE, AGED 67 YEARS, S/O.CHACKO,
PARAMBIL HOUSE, PANAMKOOTTY KARA, VELLATHOOVAL VILLAGE,
DEVIKULAM TALUK, IDUKKI DISTRICT-685 563.**
- 2. THRESSIAMMA, AGED 60 YEARS, W/O.P.C.VARGHESE,
PARAMBIL HOUSE, PANAMKOOTTY KARA, VELLATHOOVAL VILLAGE,
DEVIKULAM TALUK, IDUKKI DISTRICT-685 563.**
- 3. REJI GEORGE, AGED ABOUT 45 YEARS, S/O.GEORGE,
KELAKATHU HOUSE, ANCHIRI KARA, ALAKKODU VILLAGE,
THODUPUZHA TALUK, IDUKKI DISTRICT-685 588.**
- 4. JALLEL, AGED ABOUT 55 YEARS, S/O.MEERAKUTTY,
KOTTAPPADICAL HOUSE, VAZHAPPILLY KARA,
VELLOORKUNNAM VILLAGE, ERNAKULAM DISTRICT-686 673.**
- 5. SHAHANAS JALEEL, AGED ABOUT 50 YEARS,
W/O.JALEEL, KOTTAPPADICAL HOUSE, VAZHAPPILLY KARA,
VELLOORKUNNAM VILLAGE, ERNAKULAM DISTRICT-686 673.**

R1 & R3 BY ADV. SRI.G.SREEKUMAR (CHELUR)

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

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: A TRUE COPY OF THE PLAINT IN O.S. NO.10 OF 2015.
- EXT.P2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY DEFENDANTS 2 & 3 IN O.S. NO.10 OF 2015.
- EXT.P3: A TRUE COPY OF THE CLAM PETITION I.A. NO.184 OF 2015.
- EXT.P4: A TRUE COPY OF THE SALE DEED NO. 1114 OF 2014.
- EXT.P5: A TRUE COPY OF THE TAX RECEIPT DATED 01-07-2014.
- EXT.P6: A TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 22-03-2014.
- EXT.P7: A TRUE COPY OF THE SALE DDED NO.1113 OF 2014.
- EXT.P8: A TRUE COPY OF THE TAX RECEIPT DATED 01-07-2014.
- EXT.P9: A TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 27-02-2015.
- EXT.P10: A TRUE COPY OF THE OBJECTION FILED BY THE PLAINTIFFS IN CLAIM PETITION I.A. NO.184 OF 2015.
- EXT.P11: A TRUE COPY OF THE OBJECTION FILED BY THE DEFENDANTS 2 & 3 IN THE CLAIM PETITION I.A. NO.184 OF 2015.
- EXT.P12: A TRUE COPY OF THE COMMISSION APPLICATION I.A. NO.382 OF 2015.
- EXT.P13: A TRUE COPY OF THE COUNTER AFFIDAVIT IN EXT.P12 COMMISSION APPLICATION.
- EXT.P14: A TRUE COPY OF THE ORDER DATED 01-08-2015 IN I.A. NO.382 OF 2015 IN I.A. NO.184 OF 2015 IN O.S. NO.10 OF 2015.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

K. ABRAHAM MATHEW, J.

O.P.(C) No.1998 of 2015

Dated this the 16th day of October, 2015

J U D G M E N T

Respondents 1 and 2 filed O.S.No.10 of 2015 in the Court of Sub Judge, Muvattupuzha, for refund of the pre-paid sale consideration under an agreement for exchange of immovable properties allegedly executed between them and the first defendant. The property was attached under Order 38 Rule 5 C.P.C. Petitioners filed Ext.P3 IA.184 of 2015 claiming that they had purchased the property long before the agreement relied on by the plaintiffs. In that proceedings the learned Sub Judge appointed a commissioner to ascertain the value of the property. Its illegality is challenged.

2. Heard.

3. The petitioners claim title to the property which has been attached in the suit. Respondents 1 and 2, who are the plaintiffs, allege that the sale deed relied on by the petitioners is an under valued one. That is why the learned Sub Judge appointed a commissioner to ascertain

the value of the property. I have no doubt that it is beyond the scope of the proceedings. Once it is established that the document relied on by the petitioners is a genuineness one, the enquiry should end. The question whether the document is an undervalued one cannot be considered in this proceedings. It is also pertinent to note that the petitioners are not defendants in the suit. In any view of the matter the order passed by the learned Sub Judge is illegal.

In the result, this O.P is allowed. Ext.P14 is set aside. The learned Sub Judge is directed to consider the merits of Ext.P3 application and dispose it of without delay.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge