

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP(C).No. 2052 of 2015 (O)

O.S. No.1125/1995 OF PRINCIPAL MUNSIFF'S COURT, TRIVANDRUM

PETITIONER(S):

1. M.K. PRASAD, AGED 66 YEARS,
S/O. P.K.KUMARAN, ADVOCATE, T.C.28/17,
VAISAKH, OTTUKAL STREET, KAITHAMUKKU,
THIRUVANANTHAPURAM - 695 024.
2. DR. N.REMADEVI, AGED 60 YEARS,
W/O. M.K.PRASAD, ADVOCATE, T.C.28/17,
VAISAKH, OTTUKAL STREET, KAITHAMUKKU,
THIRUVANANTHAPURAM - 695 024.

BY ADVS. SRI. G.P.SHINOD
SRI. RAM MOHAN.G.
SRI. MANU V.
SRI. GOVIND PADMANAABHAN
SRI. AJIT G.ANJARLEKAR

RESPONDENT(S):

1. N.APPUKUTTY ACHARI, AGED 66 YEARS,
S/O. NATARAJAN ACHARI, T.C.28/21(1), SIVA BHAVAN,
OTTUKAL STREET, KAITHAMUKKU,
THIRUVANANTHAPURAM - 695 024.
2. RAMALEKSHMI, AGED 59 YEARS,
W/O. N.APPUKUTTAN ACHARI, T.C.28/21(1), SIVA BHAVAN,
OTTUKAL STREET, KAITHAMUKKU,
THIRUVANANTHAPURAM - 695 024.

BY ADVS. SRI. NAGARAJ NARAYANAN
SRI. SAIJO HASSAN
SRI. BENOJ C. AUGUSTIN
SRI. PRATHAP PILLAI
SRI. SEBIN THOMAS
SRI. VIVEK V. KANNANKERI
SRI. VISHNU BHUVANENDRAN
SRI. J. KASTHURI

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1: A PHOTOCOPY OF THE DECREE DATED 25.03.2000 IN O.S.No.1125 OF 1995 OF THE PRINCIPAL MUNSIFF COURT, THIRUVANANTHAPURAM.
- EXT. P2: A PHOTOCOPY OF E.A.No.345 OF 2004 IN E.P.No.101 OF 2001 IN O.S.No.1125 OF 1995 OF THE PRINCIPAL MUNSIFF COURT, THIRUVANANTHAPURAM.
- EXT. P3: A PHOTOCOPY OF E.A.NO.347 OF 2004 IN E.P.No.101 OF 2001 IN O.S.No.1125 OF 1995 OF THE PRINCIPAL MUNSIFF COURT, THIRUVANANTHAPURAM.
- EXT. P4: A PHOTOCOPY OF THE COMMON ORDER DATED 24.03.2004 IN E.A.No.345 OF 2004 AND 347 OF 2004 BOTH IN E.P.No.101 OF 2001 IN O.S.No.1125 OF 1995 OF THE PRINCIPAL MUNSIFF COURT, THIRUVANANTHAPURAM.
- EXT. P5: A PHOTOCOPY OF THE JUDGMENT DATED 18.06.2004 IN W.P.(C) No.13188 OF 2004 OF THIS HONOURABLE COURT.
- EXT. P6: A PHOTOCOPY OF THE JUDGMENT DATED 02.06.2005 IN W.P.(C) No.3087 OF 2005 OF THIS HONOURABLE COURT.
- EXT. P7: A PHOTOCOPY OF THE JUDGMENT DATED 18.10.2005 IN W.P.(C) No.21668 OF 2005 OF THIS HONOURABLE COURT.
- EXT. P8: A PHOTOCOPY OF THE ORDER DATED 03.09.2014 IN E.A.No.571 OF 2006 IN E.P.No.101 OF 2002 IN O.S.No.1125 OF 1995 OF THE PRINCIPAL MUNSIFF COURT, THIRUVANANTHAPURAM.
- EXT. P9: A PHOTOCOPY OF THE ORDER DATED 20.02.2015 IN E.P.No.101 OF 2002 IN O.S.No.1125 OF 1995 OF THE PRINCIPAL MUNSIFF COURT, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS

- NIL

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2052 of 2015

Dated this the 9th day of November, 2015

JUDGMENT

Petitioners are the decree holders in O.S. No.1125/1995 of Munsiff's Court, Thiruvananthapuram. The decree was executed. The respondents filed an application under Section 47 of CPC complaining of excess execution.

2. This Court by Ext.P7 judgment, appointed two advocates as Joint Commissioners who are advocates practising at Thiruvananthapuram. Their report was set aside by Ext.P8 order. They were directed to file a fresh report. It was submitted before the executing court that they are not willing to accept the assignment; they have surrendered their warrant. As seen from Ext.P9 order the executing court is not inclined to appoint another commissioner because the previous commissioners were

appointed by this Court.

3. I think in these circumstances a clarification is sufficient. It is made clear that the executing court is free to appoint anyone other than the former commissioners as commissioner to execute the work. The submission of the learned counsel for the respondents that the respondents propose to withdraw their execution application No.347 of 2004 is recorded, in which case above direction will have no effect.

In the result, this original petition is closed.

Sd/-
K. ABRAHAM MATHEW
JUDGE

ww/09/11/2015