

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP(C).No. 2101 of 2015 (O)

IA.NO.333/2015 IN OS 83/2011 OF SUB COURT, ALAPPUZHA

PETITIONER(S):

**SUNDAR LAL, AGED 48 YEARS,
S/O. VASU, KALPAKATHURUTHU VEEDU, C/O MARY
S.L.PURAM, ALAPPUZHA.**

BY ADV. SRI.B.PRAMOD

RESPONDENT(S):

**MADHUSUDHANAN, AGED 53 YEARS,
S/O PARTHAN, RATNALAYAM (KALLUCHIRAVELIUYIL),
WARD NO. 13, MADAYAMTHODU, NORTH AYRAD PO,
ALAPPUZHA.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 31-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 2101 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:** TRUE COPY OF THE PLAINT IN OS NO. 83/11 OF THE SUB COURT,
ALAPPUZHA
- EXT.P2:** TRUE COPY OF THE WRITTEN STATEMENT AND COUNTER CLAIM
FILED BY THE PETITIONER IN OS NO. 83/11 OF THE SUB COURT,
ALAPPUZHA
- EXT.P3:** TRUE COPY OF THE IA NO 333/15 ALONG WITH ACCOMPANYING
AFFIDAVIT FILED IN OS NO 83/11 OF THE SUB COURT, ALAPPUZHA
- EXT.P4:** TRUE COPY OF THE ORDER DT. 26/6/15 IN IA NO. 333/15 ALONG WITH
ACCOMPANYING AFFIDAVIT FILED IN OS NO 83/11 OF THE SUB
COURT, ALAPPUZHA

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A. MUHAMED MUSTAQUE, J.

.....
O.P.(C) No.2101 of 2015 (O)

.....
Dated this the 31st day of August, 2015

JUDGMENT

The petitioner, who is the 1st defendant has approached this Court challenging Ext.P4 order declining issuance of commission in a suit for specific performance of an agreement for sale of 5 cents of land and a pucca residential building.

2. Petitioner raised a contention regarding identity of the property.

3. The specific performance suit essentially has to be decided not based on the identity of the property but based on the willingness of the party to perform the contract. If ultimately the suit is decreed, the plaintiff would be entitled to the property, which is intended to be conveyed as per the agreement. The plaintiff cannot get any other property other than one covered by the agreement. Therefore, this Court of the view that the court below rightly dismissed the application.

I do not find any infirmity with the dismissal of the application in as much as the subject matter of the issue in the suit is only with regard to the specific performance. Accordingly, this original petition is dismissed.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

AMV/01/09/