

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

OP(C).No. 2109 of 2015 ()

OS. NO.31/2013 OF MUNSIFF COURT, VAIKOM.

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PETITIONER(S):

**KARTHIKEYAN NAIR, AGED 55 YEARS,
S/O. KUMARA PILLAI, KODUVIRITHIL HOUSE,
(KOLLEZHATH PUTHEN VEEDU), UDAYANAPURAM KARA,
VADAKKEMURI VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.P.RADHAKRISHNAN,
SRI.MADHU RADHAKRISHNAN,
SRI.NELSON JOSEPH,
SRI.M.D.JOSEPH.**

RESPONDENT(S):

**1. VENUGOPAL, AGED 68 YEARS,
S/O. BALAKRISHNA PILLAI, KOOTTOORATHIL HOUSE,
UDAYANAPURAM KARA, UDAYANAPURAM VILLAGE,
VAIKOM TALUK, KOTTAYAM DISTRICT-686 143.**

**2. RADHA R.NAIR,
AGED NOT KNOWN TO THIS PETITIONER,
W/O. RAVINDRAN NAIR, RAVI SADAN,
PAZHAVEEDU P.O., ALLEPPEY-688 001.**

R1 BY SRI.VENUGOPAL (PARTY IN PERSON).

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 : COPY OF THE PLAINT OS. 31/2013 BEFORE THE MUNSIFF'S COURT, VAIKOM.
- P2 : COPY OF THE AFFIDAVIT WITH IA. 1379/2013 IN OS. NO.31/2015.
- P3 : COPY OF WRITTEN STATEMENT IN OS. NO.31/2013.
- P4 : COPY OF OBJECTION IN IA.1379/2013 FILED BY THE RESPONDENTS/
PLAINTIFFS.
- P5 : COPY OF ORDER DTD. 19.06.2014 IN IA NO.1379/2013 PASSED BY MUNSIFF,
VAIKOM.
- P6 : COPY OF APPEAL CMA.36/2014 BEFORE THE HON'BLE DISTRICT COURT,
KOTTAYAM FILED BY THE PETITIONER.
- P7 : COPY OF STAY APPLICATION FILED ALONG WITH THE APPEAL CMA.36/2014.
- P8 : COPY OF THE OBJECTION TO CMA NO.36/2014 FILED BY THE RESPONDENT.
- P9 : COPY OF THE ORDER DTD. 26.03.2015 IN CMA. NO.36/2014 PASSED BY THE
ADDL. DISTRICT JUDGE II (SPL), KOTTAYAM.
- P10: COPY OF THE ORDER VACATING STAY DTD. 26.03.2015 PASSED BY THE
ADDL. DISTRICT JUDGE II (SPL.), KOTTAYAM.

RESPONDENT'S EXHIBITS:-

- EXT.R1 COPY OF THE DECREE IN O.S.31/2013 DATED 20/08/2013.
- EXT.R2 COPY OF THE ORDER IN I.A. NO.251/2014 IN CMA. NO.48/2013
DATED 16/08/2014 IN DISTRICT COURT, KOTTAYAM.
- EXT.R3 COPY OF THE ORDER IN WP(C).NO.3859/2010 (F) DATED 07/10/2013
OF THE HON'BLE HIGH COURT.
- EXT.R4 COPY OF THE B DIARY IN CMA.36/2014 OF APPELLATE COURT.
- EXT.R5 COPY OF THE SALE DEED NO.2419/2014 DATED 11/11/2014 OF
VAIKOM SUB REGISTRY.
- EXT.R6 COPY OF THE RATION CARD DATED 24/12/2008 PRODUCED BY
PETITIONER'S WIFE MEERA NAIR @ MEERA RAMAKRISHNAN AS EXT.B2
IN THE HON'BLE MUNSIFF COURT, VAIKOM IN O.S.7/2012 ON 06/11/2014.

//TRUE COPY//

rs.

P.S. TO JUDGE

P.B.SURESH KUMAR, J.

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O.P.(C).No.2109 of 2015

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Dated this the 22nd day of September, 2015.

J U D G M E N T

Ext.P9 judgment of the District Court, Kottayam in C.M.A.No.36 of 2014 and Ext.P10 order, by which an interim order passed in the said appeal was vacated, are under challenge in this Original Petition filed invoking Article 227 of the Constitution of India.

2. The petitioner is the defendant in O.S.No.31 of 2013 on the file of the Munsiff's Court, Vaikom. The said suit was one for damages instituted by the respondents. The petitioner did not file written statement in the suit within the time granted by the trial court. Consequently, he was set ex-parte on 27.7.2013. Later, on 20.8.2013, the suit was also decreed ex-parte. The petitioner filed Ext.P2 application seeking orders to set aside the ex-parte decree passed against him. Ext.P2 application was dismissed by the trial court as per Ext.P5 order. Ext.P5 order was challenged by the petitioner in C.M.A.No.36 of 2014 referred to above. On 26.3.2015, when the said appeal came up for hearing,

the petitioner was absent. There was no representation also for the petitioner on that day. The appellate court, in the circumstances, dismissed the appeal as per Ext.P9 judgment. Earlier, the petitioner had obtained an interim order in I.A.No.1168 of 2014 in the said appeal against the execution of the ex-parte decree passed against him. In the light of Ext.P9 judgment, the appellate court vacated the said interim order also as per Ext.P10 order. The petitioner is aggrieved by Ext.P9 judgment and Ext.P10 order.

3. Heard the learned counsel for the petitioner as also the first respondent, who appeared in person.

4. C.M.A.No.36 of 2014 is an appeal filed under Rule 1(d) of Order XLIII of the Code of Civil Procedure. Under Rule 2 of Order XLIII of the Code of Civil Procedure, Rules of Order XLI shall apply, so far as may be, to appeals from orders. As noticed above, the petitioner was not present when C.M.A.No.36 of 2014 was taken up for hearing. As such, Ext.P9 judgment can only be considered as a judgment rendered invoking Rule 17 of Order XLI of the Code of Civil Procedure. Rule 19 of Order XLI deals with the remedies available to the petitioner who is aggrieved by Ext.P9 judgment. Ext.P10 is only an order passed

consequent upon Ext.P9 judgment. In the light of the aforesaid provision contained in Order XLI of the Code of Civil Procedure, this Original Petition is not maintainable and the same is accordingly dismissed.

Sd/-

**P.B.SURESH KUMAR,
(JUDGE)**

Kvs

// true copy //

PA TO JUDGE.