

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. 2122 of 2015 (O)

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AGAINST THE ORDER IN IA.NO.1201/2014 IN O.S.NO.267/2011 ON THE FILE OF
THE SUB JUDGE, ALAPPUZHA
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PETITIONER(S)/PETITIONER/DEFENDANT:

**M.SHEREEF AGED 51 YEARS
S/O.MUHAMMED KUNJU, VELIMPARAMBIL VEEDU
DISTRICT COURT WARD, MULLACKAL VILLAGE, ALAPPUZHA.**

**BY ADVS.SRI.S.SANAL KUMAR
SRI.M.T.SURESHKUMAR
SMT.T.J.SEEMA
SMT.BHAVANA VELAYUDHAN
SMT.SMITHA PHILIPOSE**

RESPONDENT(S)/COUNTER PETITIONER/PLAINTIFF:

**KUNJUMON
MILADH MANZIL, DISTRICT COURT WARD, ALAPPUZHA-680001.**

R1 BY ADV. SRI.R.AZAD BABU

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

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE I.A.NO.1201/2014 IN O.S.NO.267/2011 DATED OCTOBER 2011 FILED BY THE PETITIONER BEFORE THE SUB COURT, ALAPPUZHA.

EXHIBIT-P2: TRUE COPY OF THE ORDER IN I.A.NO.1201/2014 IN O.S.NO.267/2011 DATED 25.06.2015 OF THE SUB JUDGE, ALAPPUZHA.

RESPONDENT'S EXHIBITS: NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C) No.2122 of 2015

Dated this the 16th day of October, 2015

J U D G M E N T

Petitioner is the defendant in O.S.No.267 of 2011, which is filed for specific performance of an agreement for sale of an immovable property. He filed IA.1201 of 2014 to appoint a commissioner to ascertain the location and advantage of the property. By Ext.P2 order, the learned Sub Judge has dismissed it.

2. Heard.

3. The contention of the petitioner is that the circumstances compelled him to execute the agreement for sale and the transaction was an unconscionable one. It is true that ordinarily in a suit for specific performance of an agreement for sale the question of appointment of a commissioner does not arise. It is in the discretion of the court to grant the decree for specific performance. There are certain facts which may influence the discretion of the court. If the agreement is an unconscionable one, even though it is genuine, the court may refuse to grant the

relief. So I am inclined to grant the prayer of the petitioner.

In the result, this O.P is allowed. Ext.P2 order is set aside and Ext.P1 application is allowed. The learned Sub Judge is requested to fix the batta for the commissioner.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge
