

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

O.P.(C).No. 2166 of 2015 (O)

OS NO.38/2011 OF SUB COURT, TIRUR

PETITIONER:

**SANEESH KUMAR, AGED 40 YEARS,
S/O. AYYAPPAN, RESIDING AT KAVUKKALATHIL HOUSE
KODAKKAD.P.O., ARIYALLOOR AMSOM, KODAKKAD DESOM,
MALAPPURAM DISTRICT - 676 319.**

**BY ADVS. SRI. HARISH R. MENON
SRI. K.T.SHYAMKUMAR**

RESPONDENT(S):

- 1. ABDUL GAFOOR,
S/O. ABDULLA KUTTY,
RESIDING AT PUTHALATH PUTHIYAKATH HOUSE,
KADULUNDI AMSOM, PAZHANCHANOOR DESOM, P.O.CHALIYAM,
KOZHIKODE DISTRICT - 673 301.**
- 2. SHOWKATH,
S/O. MOIDEENKOYA, NARIKUNNU PANDIKAZHALA,
KADULUNDI AMSOM, PAZHANCHANOOR DESOM, P.O.CHALIYAM
KOZHIKODE DISTRICT-673 301.**
- 3. IYISHA BEEVI,
D/O. KUNHIMOIDEEN KUTTY,
RESIDING AT CHAMAYIL CHAKKAVALAPPIL, KADULUNDI AMSOM,
PAZHANCHANOOR DESOM, P.O.CHALIYAM,
KOZHIKODE DISTRICT - 673 301.**
- 4. BEEKUTTY,
W/O. ABUBACKER HAJI,
RESIDING AT THALAKKOTTU THODIKA HOUSE,
NEDUVA AMSOM DESOM, P.O.PARAPPANANGADI,
MALAPPURAM DISTRICT - 676 303.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 10-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1- A TRUE COPY OF THE PLAINT IN OS NO.38/2011 ON THE FILE OF SUB COURT, TIRUR.
- EXT.P2- A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST RESPONDENT.
- EXT.P3- A TRUE COPY OF I.A.NO.1328/2015.
- EXT.P4- A TRUE COPY OF I.A.NO.1329/2015.
- EXT.P5- A TRUE COPY OF I.A.NO.1330/2015.
- EXT.P6- THE ORDER PASSED BY THE COURT BELOW IN I.A.NO.1329 & 1330 OF 2015 IN OS NO.38/2011.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

K.ABRAHAM MATHEW, J

O.P.(C)NO.2166 OF 2015

Dated this the 10th day of September, 2015

J U D G M E N T

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Petitioner is the plaintiff in O.S.No.38 of 2011 on the file of the Sub Court, Tirur. The suit is for refund of prepaid purchase price paid to the respondents pursuant to an alleged agreement for sale executed by them. In the written statement the respondents contended that one of the properties covered by the alleged agreement does not belong to them and the agreement for sale relied on by the petitioner is not genuine. After the evidence was fully recorded the petitioner filed IA.No.1329 of 2015 to reopen the evidence to issue a direction to the first defendant and DW2 to produce two documents. The application has been dismissed by the learned Sub Judge by Ext.P6 order. The legality is challenged.

2. Heard the learned counsel for the petitioner.

3. One of the documents sought to be produced is an agreement for sale allegedly executed by one Saradamma in favour of the first respondent (DW1). This

document will allegedly prove that the first respondent has the right to purchase the property. On the facts of the case the document is irrelevant. The second document sought to be produced is a will allegedly executed by a stranger. The direction to produce the document is sought to be issued to DW2, who is not a party to the suit. Section 130 of the Evidence Act prohibits issuing summons to a person who is not a party to the proceedings to produce his title deed. Moreover, that document is also irrelevant to decide the issue arising in the suit. I have no doubt that the order passed by the learned Sub Judge is fully justified.

In the result, this O.P. is dismissed.

sd/-  
**K. ABRAHAM MATHEW**  
**JUDGE**

R.AV

//True Copy//

PA to Judge