

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

OP(C).No. 2197 of 2015 (O)

PETITIONER(S):

**D.SYAMAPRASAD, AGED 78 YEARS,
S/O.G.D.NAIR, RESIDING AT THUNDATHIL VEEDU,
VADAKKEVILA, KOLLAM.**

**BY ADVS.SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN**

RESPONDENT(S):

- 1. ELIZABETH WELLINGTON (DEAD),
W/O.WELLINGTON, AMRITHAKULAMTHOPPU PURAYIDAM,
MUNDAKKAL, KOLLAM-691 001.**
- 2. B.WELLINGTON (DEAD), DO. DO.**
- 3. HENTRY THEOPHILUS, DO. DO.**
- 4. DANIEL JOSEPH THEOPHILUS, DO. DO.**
- 5. JOSEPHINE EDWARD (DEAD),
PRINCE VILLA, KADAPPAKKADA, KOLLAM - 691 003.**
- 6. BABY THAMARASSERY (DEAD),
THAMARASSERY HOUSE, KAVANADU, KOLLAM - 691 003.**
- 7. ALEX THAMARASSERY,
RESIDING THAMARASSERY HOUSE, KAVANADU,
KOLLAM - 691 003.**
- 8. MICHAEL THAMARASSERY (DEAD),
T.C.NO.24, CHITRA NAGAR, OPPOSITE PSC OFFICE,
THIRUVANANTHAPURAM - 695 001.**
- 9. RACHEL JESMAS,AMRITHAKULAM THOPE,
MUNDAKKAL KOLLAM, PIN - 691 001.**

**R3 & R9 BY ADVS. SRI.R.MOHANA BABU
SRI.M.AJITH (KARICODE)
R7 BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 2197 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE JUDGMENT DATED 7.8.2014 IN RFA NO.510/2014 OF THIS HON'BLE COURT.

EXHIBIT-P2: TRUE COPY OF THE ORDER DATED 20.11.2014 IN IA 3035/2008 IN OS 58/1998 OF THE ADDITIONAL SUB COURT KOLLAM.

EXHIBIT-P3: TRUE COPY OF THE ORDER DATED 19.2.2015 IN IA NO.3035/2008 IN OS NO.58/1998 OF THE ADDITIONAL SUB COURT KOLLAM.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2197 of 2015

Dated this the 5th day of October, 2015

J U D G M E N T

The learned counsel for the appellant submits that the 4th respondent died before the filing of the O.P and no legal representatives are to be impleaded in this proceedings. The petitioner filed O.S.No.58 of 1998 against one Elizabeth for specific performance of an agreement for sale. The suit was decreed. Immediately thereafter the defendant died. Her husband, B.Willington, filed an appeal, RFA.No.510 of 2004, in this court. Pending the appeal he also died. For non impleadment of legal representatives of the parties the appeal was dismissed as abated. Thereafter, the petitioner filed an application under Section 28(3) for the Specific Relief Act. Meanwhile, some legal representatives of the original defendant and her husband filed an application to set aside the abatement of the appeal and it was allowed. This court passed Ext.P1 judgment modifying the original decree. In the application under Section 28(3) of the Specific Relief Act the petitioner impleaded the persons

who are said to be the legal representatives of the original defendant and her husband, the original appellant. The learned Sub Judge apparently directed the petitioner to produce "the amended copy of the judgment and decree to correct the cause title". A copy of the order is Ext.P2. On 19.02.2015 the learned Sub Judge dismissed the application under Section 28(3) Specific Relief Act on the ground that the earlier order was not complied with and there was no representation for the petitioner. Its correctness is challenged.

2. Heard.

3. The direction of the learned Sub Judge to get the cause title of the judgment and decree of this court amended does not make any sense. It is not for the petitioner to amend the judgment and the decree. If all the legal representatives of the appellant were not parties to the appeal the petitioner could not have done anything. In such a case it is sufficient that in the application filed by him under Section 28(3) of the Specific Relief Act all the legal representatives of the original appellant and the original defendant are impleaded. The learned Sub Judge

has not mentioned that this has not been done by the petitioner. So I have no doubt that the orders passed by the learned Sub Judge are wrong and liable to be set aside.

In the result, this O.P is allowed. Exts.P2 and P3 orders are set aside. If all the legal representatives of the original defendant or the appellant are not made respondents in the application filed under Section 28(3) Specific Relief Act, the petitioner may do so and the learned Sub Judge shall dispose of the application in accordance with the law.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge