

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

OP(C).No. 2199 of 2015 (O)

EP NO. 226/2012 IN OS NO. 611/2007 OF MUNSIFF'S COURT, NORTH PARAVUR

PETITIONER(S) :

1. RAJAMMA, AGED 60,  
W/O.LATE CHANDRAN, PONNELIPALLATH, PANAYIKULAM  
ALANGAD VILLAGE, PIN CODE – 683511.
2. ASHOKAN, AGED 54,  
S/O.KUMARAN, PUTHUVALPARAMBIL ERAMAM KARA  
KADUNGALLUR VILLAGE, PIN CODE – 683110.
3. VISWAMBHARAN, AGED 42,  
S/O.KUMARAN, PUTHUVALPARAMBIL ERAMAM KARA  
KADUNGALLUR VILLAGE, PIN CODE – 683 110.

BY ADVS.SRI.P.VISWANATHAN  
SRI.SUNIL N. SHENOI

RESPONDENT(S) :

1. AMMINI, AGED ABOUT 62,  
W/O. VALLON, PULLORTHAZATH, PANAYIKULAM  
ALANGAD VILLAGE, PIN CODE – 683511.
2. SAJEEVAN, AGED ABOUT 54,  
S/O. VALLON, PULLORTHAZATH,  
PANAYIKULAM, ALANGAD VILLAGE  
PIN CODE – 683511.
3. KARTHIKEYAN, AGED ABOUT 45,  
S/O.VALLON, PULLORTHAZATH, PANAYIKULAM  
ALANGAD VILLAGE, PIN CODE - 683511
4. AJITHA SUNIL, AGED ABOUT 44  
D/O.AMMINI, ERETH, KADDAKKARA  
EZHIKARA, PIN CODE – 683513.

R1 TO R4 BY ADV. SMT.VANAJA MADHAVAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 08-10-2015, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

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...2/-

OP(C).No. 2199 of 2015 (O)  
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**APPENDIX**

**PETITIONERS' EXHIBITS :**  
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EXHIBIT P1 THE TRUE PHTOOCOPY OF E.P NO 226 OF 2012.

EXHIBIT P2 THE TRUE PHTOOCOPY OF THE REPORT OF THE AMIN DATED  
04-01-2014.

EXHIBIT P3 THE TRUE PHTOOCOPY OF E.A NO. 12 OF 2014.

EXHIBIT P4 THE TRUE COPY OF THE ORDER DATED 16-08-2014.

EXHIBIT P5 THE TRUE PHTOOCOPY OF THE E.A NO 197 OF 2014.

EXHIBIT P6 THE TRUE PHTOOCOPY OF THE ORDER DATED 7-7-2015 IN E.A  
NO. 197 OF 2014

RESPONDENT(S)' EXHIBITS : NIL  
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//TRUE COPY//

P.S. TO JUDGE

Mn

**K.ABRAHAM MATHEW J.**

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O.P.(C)No.2199 of 2015  
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Dated this the 8<sup>th</sup> day of October, 2015

**JUDGMENT**

Petitioners are the plaintiffs in O.S.No.611 of 2007. Final decree for partition was passed. Thereupon, the petitioners filed E.P.No. 226 of 2012 for delivery of their shares. The amin deputed to deliver the property reported delivery. The learned Munsiff recorded delivery and closed the E.P. There was a building in the property delivered to the petitioners, that was found locked. The amin did not comply with Rule 349 of Civil Rules of Practice. The petitioners are aggrieved by it.

2. Heard.

3. It is seen from Ext P2 report that there was a building in the property and it was found locked and the amin delivered the building without breaking open the lock and preparing an inventory as provided in Rule 349 of Civil Rules of Practice. Still the Munsiff did not take notice of it. He just closed the E.P. This prompted the petitioners to file Ext P3 petition to reopen the matter. That was dismissed by Ext P4 order. The petitioners filed Ext P5 petition to review the order. That also was dismissed as seen from Ext P6. I have no doubt that the procedure adopted by the court is wrong. The amin should not have delivered the property. Instead he should have reported the matter to the court, which should have

empowered the amin to break open the lock and prepare an inventory of the articles that might have been found in it. So the recording of delivery of the property is liable to be set aside. The Munsiff has to comply with Rule 349 of Civil Rules of Practice . It is also seen that in the E.P, apart from delivery of the property, some other reliefs also were prayed for. The petitioners were not given an opportunity to execute the E.P so far as those reliefs are concerned. In that view of the matter also the order by which the learned Munsiff closed the E.P is to be set aside.

In the result, this Original Petition is allowed. The learned Munsiff is directed to comply with Rule 349 of Civil Rules of Practice and give an opportunity to the petitioners to execute the E.P so far as the other reliefs are concerned. On effecting proper delivery, it shall be recorded.

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

cms

/True copy/

P.S.to Judge