

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

OP(C).No. 2240 of 2015 (O)

PETITIONER(S):

**DHAMODARAN UNNI AGED 60 YEARS
S/O.LATE ACHUTHAN NAIR, NOTTATHU HOUSE, BEMMANIYUR
PARUTHIPPULLI P.O., AALATHUR, PALAKKAD.**

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT(S):

- 1. MADHUSUDANAN, AGED 52 YEARS
S/O.LATE ACHUTHAN NAIR, DAMODHARA VILAS
NOTTATHU HOUSE, BEMMANIYUR, PARUTHIPPULLI P.O.AALATHUR
PALAKKAD - 678 541.**
- 2. SAROJA
D/O.LATE ACHUTHAN NAIR
DAMODHARA VILASNOTTATHU HOUSE, BEMMANIYUR
PARUTHIPPULLI P.O.AALATHUR, PALAKKAD - 678 541.**
- 3. SHARADHAMBIKA, AGED 68 YEARS
W/O.NARAYANAN, RESIDING AT 25/16, TEACHER'S COLONY
3RD STREET, TIRUPUR, TAMIL NADU. 638 601.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 18-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE PLAINT IN OS NO.142/2014 ON THE FILE OF THE COURT OF THE MUNSIFF AT ALATHUR.

EXT.P-2: TRUE COPY OF THE ORDER IA NO.470/2014 IN OS NO.142/2014 OF THE COURT OF THE MUNSIFF OF ALATHUR DATED 7.4.2014.

EXT.P-3: TRUE COPY OF THE ORDER IN IA NO.741/2014 IN IA NO.470/2014 IN OS.NO.142/2014 OF THE COURT OF THE MUNSIFF OF ALATHUR DATED 20.3.2015.

EXT.P-4: TRUE COPY OF THE COMMON JUDGEMENT IN CMAS. NOS.41/2015 & 42/2015 OF THE COURT OF ADDL.DISTRICT JUDGE-IV, PALAKKAD DATED 19.8.2015.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PATO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.2240 of 2015

Dated this the 18th day of September, 2015

J U D G M E N T

Petitioner is the first defendant in O.S.No.142 of 2014 on the file of Munsiff, Alathur. The suit is for partition filed by the third respondent. By Ext.P2 order the trial court restrained respondents 1 and 2 from alienating the property "without the knowledge and consent of the court". Later, they filed IA.No.741 of 2013 for permission to sell the property. By Ext.P3 order the learned Munsiff has granted the said prayer. The petitioner challenge it in CMA.No.42 of 2014, which was found not maintainable, and it was dismissed. So in this O.P he challenges the legality of Ext.P3 order.

2. Heard.

3. The petitioner had filed OS.No.2 of 2006 on the basis of a will. The trial court found that the will relied on by him is not genuine. It also found that the will relied on by the respondents 1 and 2 in this O.P is genuine. Thereafter, the third respondent filed the present suit for

partition. In this suit the petitioner relies on the very same will which was found to be not genuine in O.S.No.2 of 2006 filed by him. The other legatees under the will which has been found genuine have received the amounts they are entitled to under the will. That apart, the petitioner did not challenge Ext.P2 order. Though the third respondent challenged the order it was confirmed by the appellate court. In these circumstances I do not find anything illegal or irregular or improper in Ext.P3 order passed by the learned Munsiff.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge