

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

OP(C) .No. 2260 of 2015 (O)

(AGAINST THE ORDER DATED 24.1.2015 IN I.A.NO.58/2015 IN
O.S.NO.216 OF 1995 ON THE FILE OF THE SUBORDINATE COURT,
PATHANAMTHITTA)

PETITIONER(S) /PETITIONER/3RD DEFENDANT:

MAJOR K.MATHEWS, AGED 82 YEARS,
"ANUGRAHA", NO.1, 3RD MAIN ROAD,
ANNAJI NAGAR, K.K.NAGAR WEST, CHENNAI-600078.

BY ADV. MAJOR K.MATHEWS (PARTY-IN-PERSON)

RESPONDENT(S) /RESPONDENTS/RESPONDENTS:

1. K.O.GEORGE,
S/O.LATE K.M.OOMMEN, NO.38-A
SOUTH THIRUMALA NAGAR ROAD, VILLIVAKKAM
CHENNAI-600049.

2. M.THOMAS,
ADVOCATE, PATHANAMTHITTA.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 2260 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 11.07.2011 FILED BY THE PETITIONER IN I.A.1102/2011 IN O.S.216/1995 ON THE FILE OF THE SUB COURT AT PATHANAMTHITTA UNDER SECTION 44 OF THE EVIDENCE ACT 1872 AND SECTION 151 OF CPC.
- P2 TRUE COPY OF THE ORDER DATED 15.11.2011 BY THE LEARNED SUB JUDGE AT PATHANAMTHITTA IN I.A.1102/2011 IN O.S.216/1995
- P3 TRUE COPY OF THE ORDER DATED 07-08-2012 IN OP(C)2567/2012 PASSED BY THIS HON'BLE COURT
- P4 TRUE COPY OF THE ORDER DATED 30-08-2013 OF THE HON'BLE SUPREME COURT OF INDIA IN CIVIL APPEAL NO.7302/2013 ARISING OUT OF SLP(C)30097/2012.
- P5 TRUE COPY OF THE DEPOSITION DATED 27.7.2009 OF K.O.GEORGE,1ST RESPONDENT HEREIN BEFORE THE SUB COURT AT PATHANAMTHITTA & ON 30.9.2009 DURING HIS FURTHER CROSS EXAMINATION AT SHEET NO.3 RECORDED BY THE LEARNED SUBORDINATE JUDGE AT PATHANAMTHITTA IN O.S.216/1995
- P6 TRUE COPY OF THE LAST WILL OF K.M.OOMEN, PLAINTIFF IN O.S.216/1995 EXECUTED ON 10-4-2003 IN FAVOUR OF HIS YOUNGE SON K.O.GEORGE,THE 1ST RESPONDENT HEREIN.
- P7 TRUE COPY OF THE VAKKALATH ALLEGED TO HAVE BEEN EXECUTED BY THE PLAINTIFF K.M.OOMMEN,BUT K.O.GEORGE FORGED HIS SIGNATURE AS HIS FATHER WAS BED RIDDEN' SUFFERING FROM ALZHEIMIERS DISEASE WITH LOSS OF BRAIN SENSE' ACCORDING TO HIS DEPOSITION
- P8 TRUE COPY OF MEMORANDUM OF APPEAL IN A.S.100 OF 2003 FILED BY MR.M.THOMAS,ADVOCATE,2ND RESPONDENT HEREIN.
- P9 TRUE COPY OF THE ORDER OF THIS HON'BLE COURT DATED 16.12.2014 DISPOSING OF OP NO.(C)2567/2012 GIVING

DIRECTION TO THE SUB COURT AT PATHANAMTHITTA TO DISPOSE OF
O.S.216/1995 BEFORE THE SUMMER VACATION IN 2015.

- P10 TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A.58/2015 IN
I.A.11022011 IN O.S.216/1995 OF SUBORDINATE JUDGE OF
PATHANAMTHITTA.
- P11 TRUE COPY OF OBJECTION FILED BY THE 1ST RESPONDENT IN
I.A.58/2015 IN IA.1102/2011 IN O.A.216/1995 OF SUBORDINATE
JUDGE OF PATHANAMTHITTA
- P12 TRUE COPY OF THE IMPUGNED ORDER DATED 24.1.2015 IN
I.A.58/2015 IN O.S.216/1995 OF THE LEARNED SUB JUDGE AT
PATHANAMTHITTA.

RESPONDENT(S) ' EXHIBITS: NIL

// TRUE COPY//

PA TO JUDGE

K.ABRAHAM MATHEW, J.

O.P.(C). No.2260 of 2015

Dated this the 23rd day of September, 2015

JUDGMENT

Petitioner is the 3rd defendant in O.S.No.216 of 1995. He filed I.A.No.58 of 2015 with the following prayer:

“For the reasons stated in accompanying affidavit it is humbly prayed that this hon'ble court may be pleased to allow the prayer therein”.

By Ext.P12 order the learned Sub Judge dismissed it. I have heard the petitioner who has appeared in person. The prayer in I.A.No.58 of 2015 is to allow the prayer in the affidavit filed in support of the application. Ext.P10 is the affidavit. In fact, there is no prayer in it. So I do not find any illegality or irregularity in the impugned order though it is not at all satisfactory, carelessness on the part of the Sub Judge being writ large on the face of the order.

In the result, this O.P disposed of with a direction to the Sub Judge to consider the grievance of the petitioner if a proper application is filed.

**K.ABRAHAM MATHEW
JUDGE**