

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

OP(C).No. 2290 of 2015 (O)

O.S.NO. 370/2011 of PRINCIPAL SUB COURT, ERNAKULAM

**PETITIONER [ADDL. 2ND RESPONDENT IN O.S.NO.370/2011 AND DEFENDANT IN
O.S.NO. 412/2011 IN THE FILE OF SUB COURT, ERNAKULAM]**

**J.K.SURESH,
S/O. J.KELAPPAN, JATHIYULLAPARAMBIL HOUSE,
NO. 26/684-A, CHAVARA ROAD, KONTHURUTHY,
THEVARA P.O., KOCHI-13.**

**BY ADVS.SRI.ABRAHAM P.GEORGE
SRI.K.VINODKUMAR (707/89)
SMT.M.SANTHY
SRI.P.S.SUNIL**

**RESPONDENTS [PLAINTIFF IN O.S.NO. 370/2011 AND 412/2011 AND IST DEFENDANT
IN O.S.NO. 370/2011 IN THE FILE OF SUB COURT ERNAKULAM :**

- 1. SHEEBA RAJU, AGED 46 YEARS,
D/O. LATE T.P.CHERIAN AND WIFE OF RAJU JOHN ,
POOTHAKUZHI HOUSE, S.A.ROAD, KADAVANTHRA P.O.,
ELAMKULAM VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT, KOCHI-20.**
- 2. N.JAYAKRISHNAN
S/O. N.K.NARAYANASWAMI, 'KRISHNA KRIPA',
C.P.UMMER ROAD, ELAMKULAM VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT, PIN-682035.**

**R2 BY ADV. SMT.M.D.BEENA
R1 BY ADV. SRI.BIJIMON C.CHERIAN
R1 BY ADV. SMT.P.P.STELIA**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1- TRUE PHOTOCOPY OF PLAINT IN O.S.NO. 370/2011 IN THE FILE OF 1ST ADDITIONAL SUB COURT, ERNAKULAM.
- EXHIBIT P2- TRUE PHOTOCOPY OF THE WRITTEN STATMENT FILED 1ST DEFENDANT IN O.S.NO. 370/2011 IN THE FILE OF 1ST ADDITIONAL SUB COURT, ERNAKULAM.
- EXHIBIT P3- TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED 2ND DEFENDANT IN O.S.NO. 370/2011 IN THE FILE OF 1ST ADDITIONAL SUB COURT, ERNAKULAM.
- EXHIBIT P4- TRUE PHOTOCOPY OF PLAINT IN O.S. 412/2011 IN THE FILE OF 1ST ADDITIONAL SUB COURT, ERNAKULAM.
- EXHIBIT P5- TRUE PHOTOCOPY OF WRITTEN STATEMENT IN O.S. 412/2011 IN THE FILE OF 1ST ADDITIONAL SUB COURT, ERNAKULAM.
- EXHIBIT P6- TRUE PHOTOCOPY OF JOINT TRIAL APPLICATION IN I.A.NO. 4337/2014 IN O.S. 370/2011.
- EXHIBIT P7- TRUE PHOTOCOPY OF COUNTER AFFIDAVIT TO THE JOINT TRIAL APPLICATION.
- EXHIBIT P8- CERTIFIED COPY OF ORDER IN I.A.NO. 4337/2014 IN O.S.NO. 370/2011.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

AK

K. ABRAHAM MATHEW, J.

O.P.(C).No. 2290 of 2015

Dated this the 09th day of October, 2015

JUDGMENT

Petitioner's father was a lessee of a room belonging to the second respondent. The first respondent filed O.S.No. 370/2011 against the second respondent for return of the security deposit her father had made in respect of the shop room. The petitioner was conducting business in the adjoining room which also belonged to the second respondent. Later the first respondent filed O.S.No. 412/2011 against the petitioner for rendition of accounts on the allegation that her father and the petitioner in this O.P. were jointly conducting a business. In his written statement the second respondent in O.S.No. 370/2011 raised the contention that the petitioner and the father of the first respondent entered into a new agreement for joint business in respect of the rented out rooms and accordingly, a change was made in the amount given as a security deposit and the second respondent paid back Rs. 2,50,000/- (Rupees Two lakh fifty thousand only) to the father of the first respondent. Accordingly, the petitioner was also impleaded as the second

defendant in O.S.No. 370/2011. Issues framed in both cases. By the impugned order the learned Sub Judge directed joint trial of the 2 suits. This is challenged in this O.P.

2. Heard.

3. It is in the light of the contention of the second respondent in O.S.No. 370/2011 the petitioner was impleaded in it. His case is that a new agreement was entered into between the parties concerned and accordingly, the amount given as a security for the rent was re-fixed and he paid back Rs. 2,50,000/- (Rupees Two lakh fifty thousand only) to the petitioner.

4. This means that facts of the two cases are to be considered together. The field of controversy appears to be the same so far as a material issue is concerned. So I do not find anything wrong in the direction given by the trial court for joint trial of the two cases.

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

Sd/-
K. ABRAHAM MATHEW, JUDGE.

//True copy//

P.A. To Judge