

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

OP(C).No. 1268 of 2014 (O)

IA.216/2013 IN OS 302/2011 OF SUB COURT, SULTHAN BATHERY.

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PETITIONER(S):

*IBRAHIM, AGED 57 YEARS, S/O.MOIDU,
PALOLI HOUSE, PADINJARATHARA AMSOM DESOM,
VYTHIRI TALUK, WAYANAD DISTRICT.(DIED)

*ADDL.PETITIONERS 2 TO 5 IMPLEADED

2. FATHIMA, AGED 80 YEARS, W/O.LATE MOIDU,
PALOLI HOUSE, PADINJARATHARA AMSOM DESOM,
VYTHIRI TALUK, WAYANAD DISTRICT.

3. NABEESA, AGED 50 YEARS, W/O.LATE IBRAHIM,
-DO- -DO-

4. ABEER, AGED 26 YEARS, S/O.LATE IBRAHIM, DO. DO.

5. KHAMARUNNISA, AGED 29 YEARS, W/O.USMAYI,
MUDIRAKKALIL HOUSE, PEECHAMKODE.P.O.,
EDAVAKA AMSOM DESOM, MANANTHAVADY TALUK.

ADDL. PETITIONERS 2 TO 5 ARE IMPLEADED AS LRS OF
DECEASED PETITIONER AS PER ORDER DATED 4.6.2015 ON
IA.NO.7271/2015.

BY SRI.GRASHIOUS KURIAKOSE (SENIOR ADVOCATE)
ADV. SMT.CELINE JOSEPH

RESPONDENT:

K.J. MATHEW, AGED 44 YEARS,
S/O.JOSEPH, KOZHUVANAL HOUSE,
PADINJARATHARA AMSOM DESOM, VYTHIRI TALUK,
WAYANAD DISTRICT.

BY ADV. SRI.MATHEW KURIAKOSE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF THE EX-PARTE DECREE IN O.S.NO.302/2011 DATED 19.12.2011 OF THE SUBORDINATE JUDGE'S COURT, SULTHAN BATHERY.
- P2: TRUE COPY OF THE C.M.A.NO.8/2013 IN O.S.NO.302/2011 OF THE DISTRICT JUDGES COURT, WAYANAD, KALPETTA.
- P3: TRUE COPY OF THE AFFIDAVIT AND PETITION I.A.NO.216/13 IN C.M.A.NO.8/2013 IN O.S.NO.302/2011 OF THE DISTRICT JUDGES COURT, WAYANAD, KALPETTA.
- P4: TRUE COPY OF THE ORDER DATED 27.3.2014 IN I.A.NO.216/2013 IN C.M.A.8/2013 OF THE DISTRICT JUDGE, KALPETTA WAYANAD.
- P5: TRUE COPY OF THE RECEIPT DATED 31.3.2014.
- P6: TRUE COPY OF THE ORDER DATED 4.4.2014 IN I.A.NO.216/2013 IN C.M.A.NO.8/2013 OF THE DISTRICT JUDGE, KALPETTA WAYANAD.

RESPONDENT(S)' EXHIBITS:

- EXT. R1(A) : TRUE COPY OF THE AFFIDAVIT AND PETITION IN E.A.NO.158 OF 2014 IN E.P.NO.232 OF 2013 IN OS.NO.302 OF 2011 ON THE FILES OF THE SUB COURT, SULTHAN BATHERY.
- EXT.R1(B) : TRUE COPY OF THE PLAINT IN O.S.NO.260 OF 2013 ON THE FILES OF THE MUNSIF COURT, KALPETTA.
- EXT. R1(C) : TRUE COPY OF THE CERTIFICATE DATED 30.9.2013 ISSUED BY THE VILLAGE OFFICE, PADINJARATHARA.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B.KEMAL PASHA, J.

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O.P.(C). No.1268 of 2014

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Dated this the 9th day of June, 2015

J U D G M E N T

A decree for specific performance was passed exparte. Much belatedly, an application under Order 9 Rule 13 was filed along with another application for getting the delay condoned. Both the said applications were dismissed, on which a C.M.A was preferred, that too belatedly. As a condition precedent for condoning the delay, the learned District Judge has ordered the payment of cost and production of the receipt for evidencing the deposit of cost. That was also not done. Consequently, the C.M.A was also dismissed.

2. In the meantime, the property was sold by the present petitioner, who is the original defendant, to a third

party, as is evident from Exhibit R1(a). The third party, who purchased the property had stepped in and filed a separate suit for a declaration that the decree is not binding on him. The said suit is pending. Exhibit R1(b) is the plaint in the said suit. It seems that still the petitioner is hanging around and wants to get the original decree set aside. This court does not understand the present interest of the petitioner in the matter. Law is for the vigilant and not for the lazy. The petitioner was sleeping over his rights to get the exparte decree set aside. The court cannot assist such a party, especially when considering the fact that the property in question has been sold out by the petitioner to a third party, who has presently filed a suit. This Original Petition (Civil) is devoid of merits and is only to be dismissed and I am doing so.

In the result this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE