

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

OP(C).No. 4321 of 2011 (O)

(I.A.NO.468/2009 IN OS.NO. 120/2007 OF ADDL.MUNSIFF COURT, CHERTHALA)

PETITIONER(S):

1. JOSEPH NELSON,
S/O.LATE CHEEKU ALIAS FRANCIS, DOOR NO.X/1847,
ARRAKKAL HOUSE, RAMESWARAM VILLAGE,
PALLURUTHY.
2. MARY NELBI, WIFE OF LAIJU,
THENGUPPURAKKAL, RAMESWARAM VILLAGE,
PALLURUTHY.
3. MARY NANCY, W/O.ROBIN,
CHETTIPARAMBIL, PALARIVATTOM P.O., ERNAKULAM.
4. BABU ALIAS JENSON, S/O.LATE CHEEKU ALIAS FRANCIS,
DOOR NO.X/1846, ARRAKKAL HOUSE, RAMESWARAM VILLAGE,
PALLURUTHY.

BY ADVS. SRI.V.L.SHENOY
SRI.JAYAWANTH.L

RESPONDENT :

PHILOMINA ARULAPPAN,D/O.ARULAPPAN,
KALATHIL HOUSE, CHELLANAM VILLAGE,
CHELLANAM P.O., KOCHI-682 008

BY ADV. SRI.S.SACHITHANANDA PAI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).NO.4321/2011

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: COPY OF PETITION IA.468/2009 IN OS.120/2007 ON THE FILE OF
MUNSIFF'S COURT, CHERTHALA.

EXHIBIT P2: COPY OF THE ORDER DATED 19/10/2011 IN IA.468/2009 IN OS.120/2007
ON THE FILE OF MUNSIFF'S COURT, CHERTHALA.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.S.TO JUDGE

sts

B.KEMAL PASHA, J.

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O.P.(C) No. 4321 of 2011
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Dated this the 23rd day of June, 2015

J U D G M E N T

Ext.P2 order dated 19.10.2011 in I.A.No.468/09 in O.S.No.120/07 is under challenge. The said IA was one for appointment of a Commissioner. The court below has appointed a Commissioner and the Commissioner had filed an interim report before the court below stating that documents were not made available for identifying the properties properly.

2. On receipt of the said report from the Commissioner, the court below has passed Ext.P2 order by observing that the Commissioner had reported that the delivery *keychit* in respect of the property was highly

essential for identifying the property. The court below has found fault with the petitioner in not making available the delivery *keychit* and other documents available to the Commissioner to identify the property. It is on that ground it seems that the said IA was dismissed through Ext.P2 order.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The learned counsel for the petitioner has submitted that presently the petitioner could procure the certified copy of the delivery *keychit* and he is in possession of the same, and he is ready to make it available to the Commissioner for identification of the property. It is a fact that the property has not been identified. The Commissioner could not identify the property and thereby, he could not execute the Commission warrant. When the petitioner is ready to produce the documents required for the identification of the property, it is only just and proper in the interest of justice to permit the petitioner to make it available

to the Commissioner or produce it before the court below, and to direct the court below to appoint the Commissioner once again.

In the result, this Original Petition is allowed and Ext.P2 order is set aside. The court below is directed to issue Commission warrant once again to the Commissioner for enabling the Commissioner to execute the warrant. The petitioner shall produce the documents before the court below, at the earliest, and the court below shall immediately pass appropriate orders in the matter. The Commissioner shall execute the warrant without delay, at any rate, within a period of three months from the date of receipt of the warrant.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge