

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

OP(C).No. 2620 of 2015 (O)

OS 13/2014 SUB COURT, KOCHI

PETITIONER/1ST DEFEDANTS(SOLE APPEARING DEFENDANT) :

**SMT.MEENA L.THAKKER, AGED 78 YEARS,
RESIDING AT 528, EAST COAST ROAD, OCEAN PARK,
SINGAPORE - 458 969.**

**BY ADVS.SRI.SREELAL N.WARRIER
SRI.M.S.AMAL DHARSAN**

RESPONDENTS PLAINTIFF & DEFENDANTS 2 TO 5 :

- 1. SRI.PRADEEP LAXMIDAS THAKKER
RESIDING AT JAI JAGADISH BUILDING, N.S.ROAD
NO.51ST FLOOR, FLAT NO.4, PLOT NO.8
BEHIND COOPERHOSPITAL, JUHU SCHEME, VILE PARLE
MUMBAI -400058.**
- 2. SMT. RITA BHARAT GANDHI
73, JUHU GAURAV, GULMOHAR CROSS ROAD NO.11
OPP:SAURASHTRA SOCIETY, J.V.P.D., MUMBAI -400049.**
- 3. SRI. AMBRISH L THAKKER
528, EAST COAST ROAD, OCEAN PARK
SINGAPORE -458 969.**
- 4. SMT. SMITA YOGESH ADHIA
MAHARAJA SURJAMAL, FLAT NO.7, 3RD FLOOR
JUHUVERSOVA LINK ROAD, ANDHERI WEST, MUMBAI - 53.**
- 5. SMT. CHETAN L.THAKKER
JAI JAGADISH BUILDING PLOT NO.8, FLAT NO.3
N.S.ROAD NO.5 IST FLOOR, VILE PARLE (W)
MUMBAI - 400056.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

OP(C).No. 2620 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE PHOTOCOPY OF THE PLAINT IN OS NO.13/2014 ON THE FILE OF THE SUB COURT, KOCHI.
- EXT.P-2: TRUE PHOTOCOPY OF THE WRITTEN STATEMENT IN OS NO.13/2014 ON THE FILE OF THE SUB COURT, KOCHI.
- EXT.P-3: TRUE PHOTOCOPY OF THE APPLICATION IN IA NO.644/2015 IN -DO-.
- EXT.P-4: TRUE PHOTOCOPY OF THE OBJECTION IN IA NO.644/2015 IN -DO-.
- EXT.P-5: TRUE PHOTOCOPY OF THE APPLICATION IN IA NOS.945 IN -DO-.
- EXT.P-6: TRUE PHOTOCOPY OF THE APPLICATION IN IA NO.944/2015 IN -DO-.
- EXT.P-7: TRUE PHOTOCOPY OF THE OBJECTIONS IN IA NO.945 OF 2015 IN -DO-.
- EXT.P-8: TRUE PHOTOCOPY OF THE OBJECTIONS IN IA NO.944 OF 2015 IN -DO-.
- EXT.P-9: TRUE PHOTOCOPY OF THE ORDER IN EXHIBIT P3 APPLICATION.
- EXT.P-10: TRUE COPY OF THE COMMON ORDER IN EXHIBIT P5 & P6 APPLICATIONS.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

K.ABRAHAM MATHEW J.

O.P.(C) No.2620 of 2015

Dated this the 26th day of November, 2015

JUDGMENT

Petitioner is the first defendant in O.S.No.13 of 2014 of Sub Court, Kochi. First respondent is the plaintiff. The suit is for certain reliefs in respect of a power of attorney allegedly executed by the plaintiff and some of the defendants in favour of the 5th respondent and a release deed allegedly executed by the 5th respondent in favour of the petitioner-first defendant on the strength of the power of attorney. There is also a prayer for direction to deposit Rs.13,00,000/-. The petitioner alone filed a written statement . She has no objection to the prayers being granted in respect of the above two documents.

2. One of the prayers in the suit was to direct the defendants including the petitioner to deposit Rs.13,00,000/- before the court or to furnish security for the said amount. There is no prayer for release of the amount to anyone or declaration of right of anyone to the amount. So the relief is only in the nature of an interim relief. Naturally it cannot be granted in the suit.

3. The petitioner disclosed in her written statement that she has got title to the property under a Will executed by her husband. (vide paragraph 7 of the written statement). On Ext P3 application filed by the first respondent the learned Sub Judge ordered her to

produce the Will notwithstanding the objection raised by the petitioner. This order is challenged. The first respondent also filed Ext P5 application to receive copies of certain documents and filed Ext P6 application to direct the custodian of the documents, which is a bank, to produce certified copies of those documents. Those applications also have been allowed inspite of the objections raised by the petitioner. Correctness of this order also is challenged.

4. Heard.

5. I have perused Ext P9 order passed by the learned Sub Judge directing the petitioner to produce the original Will executed by her husband. It is not known how the Will is relevant to decide any of the issues arising in the suit. Trial of the suit is not necessary because the only contesting defendant, the petitioner, has no objection to the reliefs being granted except the one relating to deposit of the amount, which as mentioned above was only in the nature of interim relief. So it was unnecessary for the learned Sub Judge to pass the impugned Ext P9 order.

6. The application for reception of copies of documents and direction for production of certified copies of those documents were disposed of by Ext P10 common order. If the suit itself can be disposed of without a trial it is not at all necessary that these documents should be summoned. Moreover, these applications were filed when the suit came up for trial.

7. For the reasons stated above, I hold that Exts P9, and P10 order to the extent it relates to summoning of the certified copies of the documents, are liable to be set aside

In the result, this Original Petition is allowed in part. Ext P9 order is set aside. Ext P10 is also set aside to the extent it relates to summoning of documents.

Sd/-
K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge