

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

O.P.(C).No. 2627 of 2015 (O)

O.S. No.180/2012 OF SUB COURT,ALAPPUZHA

PETITIONER:

**LAKSHMI KANTHAN, AGED 64 YEARS, S/O.BHIMA BHATTAR,
DIRECTOR, BHIMA INFRASTRUCTURE AND PROPERTIES PRIVATE LIMITED,
SREE NIVAS, ALAPPUZHA MURI, MULLAKKAL VILLAGE,
ALAPPUZHA DISTRICT.**

**BY ADVS. SRI. S.VINOD BHAT
SRI. LEGITH T.KOTTAKKAL**

RESPONDENT(S):

- 1. LUKOSE ZACHARIA @ ZAK NEDUMCHIRA LUKE,
S/O. LATE ITTY ZACHARIAH, HOUSE NO.421-A, ERAYIL KADAVU,
VIJAYAPURAM VILLAGE, KOTTAYAM DISTRICT
NOW RESIDING AND WORKING AT 6145, NORTH SHERIDAN ROAD,
APARTMENT NO.14 D, CHICAGO, ILLINOIS - 60660 USA.**
- 2. SHAJI, S/O.ANTONY, THARAKARA PARAMBIL HOUSE,
PULIMUKKUNNU MURI, KAINAKARI VILLAGE,
KUTTANADU TALUK, ALAPPUZHA. PIN - 688 501.**
- 3. TESSY JOSEPH, W/O. SHAJI ANTONY,
THARAKARA PARAMBIL HOUSE, PULIMUKKUNNU MURI,
KAINAKARI VILLAGE, KUTTANADU TALUK,
ALAPPUZHA, PIN - 688 501.**
- 4. JOSEPH JOSEPH, S/O. P.A.JOSEPH, PALLIPARAMBIL HOUSE,
CHUNGAM WARD, ALAPPUZHA - 688 001.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: COPY OF THE PLAINT O.S.180/2012 OF THE SUB COURT, ALAPPUZHA.
- EXT.P2: COPY OF WRITTEN STATEMENT FILED BY THE 1ST DEFENDANT IN O.S.180/2012 OF THE SUB COURT, ALAPPUZHA.
- EXT.P3: COPY OF PETITION I.A.680/2015 IN O.S.180/2012 OF THE SUB COURT, ALAPPUZHA.
- EXT.P4: COPY OF ORDER DATED 14/07/2015 IN IA.662/2015 IN O.S.180/2012 OF THE SUB COURT, ALAPPUZHA.
- EXT.P5: COPY OF THE JUDGMENT DATED 16/07/2015 IN O.P. (C).No.1706/2015 OF THE HIGH COURT OF KERALA.
- EXT.P6: COPY OF THE PETITION I.A.721/2015 IN O.S.180/2012 OF THE SUB COURT, ALAPPUZHA.
- EXT.P7: COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT HEREIN IN O.S.180/2012 OF SUB COURT, ALAPPUZHA.
- EXT.P8: COPY OF THE ORDER DATED 25/09/2015 IN IA.721/2015 IN OS.180/2012 OF SUB COURT, ALAPPUZHA.

RESPONDENT(S)' EXHIBITS - **NIL**

//TRUE COPY//

P.A. TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C). No. 2627 of 2015

Dated this the 3rd day of November, 2015

JUDGMENT

Petitioner is the 1st defendant in O.S. No.180/2012 of Sub Court, Alappuzha. The suit has been filed by the 1st respondent in respect of an immovable property. He claims to be the owner of the property. On the strength of a power of attorney allegedly by him the 4th respondent executed a sale deed in favour of the 2nd and 3rd respondents in year 2008, who in turn executed a sale deed in favour of the petitioner in 2011. The suit has been filed by the 1st respondent to cancel the sale deed mentioned above on the ground that the power of attorney is not genuine. He has also prayed for recovery of possession of the property from the 1st respondent and for a perpetual injunction. The petitioner filed Ext.P6 application to amend the written statement to make a counter claim. By Ext.P8 order the learned Sub Judge has

dismissed it. Its correctness is questioned in this Original Petition.

4. Heard.

5. The reliefs prayed for in the proposed counter claim are;

- 1) recovery of two crores rupees as damages from respondent 2 and 3.
- 2) To recover fifty lakhs rupees from the 1st respondent as value of improvements effected by the petitioner in the property.

6. The petitioner can raise a claim two crores of rupees as compensation only in case the court finds that the power of attorney is not genuine and he is a victim of cheating. The cause of action for this relief will arise only if the court enters a finding that the power of attorney is not genuine. A counter claim can be made only in respect of a cause of action which arose before the filing of the written statement. So this relief cannot be claimed in a counter claim.

7. The other relief prayed for is value of improvements. In fact this relief has already been prayed for in the written statement. For this, a counter claim is not necessary. It is sufficient for the petitioner to state in his written statement that in case the court finds that he is liable to be evicted, he is entitled to value of improvements. That has already been done by amending the written statement. So it is not necessary to incorporate this relief in a counter claim.

8. In the light of the above discussion, I hold that no interference is call for in the impugned order. The original petition is liable to be dismissed.

In the result, this original petition is dismissed with the above observations.

Sd/-
K. ABRAHAM MATHEW
JUDGE