

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP(C).No. 2697 of 2015 (O)

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(CHALLENGING THE ORDER IN IA.1455/2015 IN OS.212/2015 BEFORE THE
MUNSIFF MAGISTRATE COURT PONNANI DATED 06.11.2015)**

PETITIONER(S)/DEFENDANT:

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HASSAN KOYA AGED 46 YEARS
S/O.KUNJHU
PERINGATTU THPDIYIL HOUSE
ANAKKARA (PO)
PATTAMBI TALUK, PALAKKAD DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S)/PLAINTIFF:

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MANIKANDAN, S/O.ACHUTHAN
PANEKKATTU HOUSE
EDAPPAL AMSOM, POLPPAKKARA DESOM
EDAPPAL (PO), PIN 679 576.
TIRUR TALUK, MALAPPURAM DISTRICT.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 09-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1- A TRUE COPY OF THE PLAINT IN O.S.212/2015 BEFORE THE MUNSIF MAGISTRATE COURT PONNANI DATED 22.06.2015.

EXHIBIT.P2- A TRUE COPY OF THE APPLICATION FOR ATTACHMENT OF MOVABLE PROPERTY AS IA.821/2015 IN OS.212/2015 BEFORE THE MUNSIF MAGISTRATE COURT PONNANI DATED 22.06.2015.

EXHIBIT.P3- A TRUE COPY OF THE COUNTER TO THE APPLICATION FILED BY THE PETITIONER TO IA.821/2015 IN OS.212/2015 BEFORE THE MUNSIF MAGISTRATE COURT PONNANI DATED 16.07.2015.

EXHIBIT.P4- A TRUE COPY OF THE IA.1455/2015 IN OS.212/2015 BEFORE THE MUNSIF MAGISTRATE COURT PONNANI DATED 18.08.2015.

EXHIBIT.P5- A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER TO IA.1455/2015 IN OS.212/2015 BEFORE THE MUNSIF MAGISTRATE COURT TIRUR DATED 22.09.2015.

EXHIBIT.P6- ATYPED COPY OF THE ORDER IN 1455/2015 IN OS.212/2015 BEFORE THE MUNSIF MAGISTRATE COURT PONNANI DATED 06.11.2015.

RESPONDENTS' EXHIBITS: **NIL**

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.2697 of 2015

Dated this the 9th day of November, 2015

J U D G M E N T

Petitioner is the defendant in OS.212 of 2015 on the file of Munsiff Court, Ponnani. The suit is for recovery of money. The respondent/petitioner filed an application under Order 38 Rule 5 C.P.C for attachment of movable properties allegedly belonging to the petitioner. The petitioner entered appearance and filed an objection stating that the movable properties belong to a firm of which he is a partner and it is not attachable under Order 21 Rule 49 C.P.C. Meanwhile, the learned Munsiff appointed a commissioner to take the stock in the shop room of the petitioner. This is challenged.

2. Heard.

3. The order of attachment was passed in June 2015. The ameen who visited the property went back without effecting the attachment allegedly on the ground that the petitioner told him that the properties belong to a partnership firm. I do not find any justification for the ameen's not effecting the attachment. He was duty bound

to execute the warrant. The learned Munsiff shall take notice of it. Now after five months the petitioner has come to this court complaining about the visit of the commissioner. The order appointing a commissioner is not an order against any one. Commissioner is appointed only for collection of evidence. If the stock is not taken and the petitioner happens to remove all the articles from his shop, it will cause irreparable injury of the respondent. So I am not inclined to interfere with the order appointing the commissioner.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge