

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

OP(C).No. 2896 of 2015 (O)

(E.P.NO.98/2015 IN O.S.NO.27/2015 OF PRINCIPAL MUNSIFF COURT-1, KOZHIKODE)

PETITIONER/DEFENDANT :

**T.S.SAHIR,S/O.T.IBRAHIM, AGED 42 YEARS,
ROOZY NIVAS, AMBALAPARAMBIL, POST NALLALAM,
NALLALAM VILLAGE, KOZHIKODE TALUK.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENT(S)/PLAINTIFFS :

- 1. A.K.RADHAMANI AMMA, AGED 75 YEARS,
D/O.LATE M.K.KRISHNAN NAIR, ANUPAMA GARDANS,
KOTTOOLI AMSOM AND PARAYANCHARI DESOM,
KOZHIKODE TALUK-673 106**
- 2. P.S.SANJEEVA, AGED 46 YEARS, S/O. A.K.RADHAMANI AMMA,
ANUPAMA GARDANS, KOTTOOLI AMSOM AND PARAYANCHARI DESOM,
KOZHIKODE TALUK-673 106**
- 3. P.S.RAJITH, AGED 41 YEARS, D/O.A.K. RADHAMANI AMMA,
ANUPAMA GARDANS, KOTTOOLI AMSOM AND PARAYANCHARI
DESOM, KOZHIKODE TALUK-673 106**
- 4. P.S.ANURADHA, AGED 41 YEARS, D/O.A.K. RADHAMANI AMMA,
ANUPAMA GARDANS, KOTTOOLI AMSOM AND PARAYANCHARI DESOM,
KOZHIKODE TALUK-673 106.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE PLAINT IN O.S.NO.27 OF 2015 ON THE FILE OF PRINCIPAL MUNSIF'S COURT-1, KOZHIKODE FILED BY THE RESPONDENTS HEREIN.**
- P2 COPY OF THE WRITTEN STATEMENT DATED 3/3/2015 FILED BY THE PETITIONER MUNSIF'S COURT-1, KOZHIKODE**
- P3 COPY OF THE OBJECTION DATED 3/3/2015 SUBMITTED BY THE PETITIONER TO THE INJUNCTION APPLICATION IN O.S.NO.27 OF 2015 OF THE FILE OF PRINCIPAL MUNSIF'S COURT-1, KOZHIKODE**
- P4 COPY OF THE APPLICATION I.A.NO.1223 OF 2015 AND AFFIDAVIT DATED 23/2/2015 IN O.S.NO.27 OF 2015 SUBMITTED BY THE PETITIONER BEFORE THE PRINCIPAL MUNSIF'S COURT-1, KOZHIKODE**
- P5 COPY OF THE EXECUTION PETITION NO.98 OF 2015 FILED BY THE RESPONDENTS HEREIN IN O.S.NO.27 OF 2015 ON THE FILE OF PRINCIPAL MUNSIF'S COURT-1, KOZHIKODE**
- P6 COPY OF THE APPLICATION FOR SETTING ASIDE THE EX-PARTE ORDER IN EA NO.214 OF 2015 IN EXECUTION PETITION IN O.S.NO.27 OF 2015 ON THE FILE OF PRINCIPAL MUNSIF'S COURT-I, KOZHIKODE**
- P7 COPY OF THE APPLICATION FOR STAYING THE RECORDING OF DELIVERY IN EANO.215 OF 2015 IN EXECUTION PETITION IN O.S.NO.27 OF 2015 DATED 20/11/2015 ON THE FILE OF PRINCIPAL MUNSIF'S COURT-1, KOZHIKODE**
- P8 COPY OF THE APPLICATION FOR RESTITUTION OF THE PROPERTY DATED 27/11/2015 FILED BY THE PETITIONER IN O.S.NO.27 OF 2015 ON THE FILE OF PRINCIPAL MUNSIF'S COURT-1, KOZHIKODE**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

K. ABRAHAM MATHEW, J.

O.P.(C)No.2896 of 2015

Dated this the 27th day of November, 2015

J U D G M E N T

Petitioner was the defendant in OS. 27 of 2015 of Principal Munsiff Court, Kozhikode. The suit was for eviction. An ex parte decree was passed in favour of the respondents. In execution of the decree delivery was effected. The petitioner had already been filed Ext.P4 application to stay the ex parte decree. Now the prayer in the OP is

i). to direct the trial court to dispose of Ext.P4 application as expeditiously as possible and at any rate before recording delivery of the plaint schedule property.

ii). to direct the executing court to dispose of Ext.P6 application filed to set aside the ex parte order in the execution proceedings and Ext.P7 application to stay the recording of the delivery of the property as expeditiously as possible and at any rate before the delivery of the property is recorded.

iii). to direct the trial court to dispose of Ext.P8 application filed by the petitioner for restitution of the

property before the delivery of the property is recorded.

iv). to direct the executing court to keep in abeyance recording of delivery and not to proceed with the execution petition.

2. Heard.

3. Pursuant to the decree the property has already been delivered. This court cannot direct the executing court not to record the delivery of the property.

4. The petitioner has filed an application for restitution. He is entitled to file the application only after the ex parte decree is set aside. This court cannot direct the trial court to consider it along with the application to set aside the ex parte decree.

5. Since the decree has already been executed the question of staying further proceedings in the execution does not raise.

6. The only prayer that can be allowed is directed to the learned Munsiff to dispose of the application to set aside the ex part decree without delay.

In the result this OP is disposed of with a direction to the learned Munsiff to dispose of the application to set

aside the ex parte decree before the court closes for x'mas holidays. The trial court can consider the application for restitution after an order is passed on the application to set aside the ex parte decree.

sd/-

**K. ABRAHAM MATHEW
JUDGE**

R.AV

H/O

//True Copy//

PA to Judge