

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

OP(C).No. 3001 of 2015 (O)

(I.A.NO.1402/2013 IN OS.NO.500/2010 OF SUB COURT, ALAPPUZHA)

PETITIONER :

**SUMATHY,
W/O.LATE LEKSHMANAN, AGED 83 YEARS,
KAITHAKULANGARA, AVALOOKKUNNU P.O.,
KOMALAPURAM VILLAGE, ALAPPUZHA.**

**BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G**

RESPONDENT :

**N.HARIKRISHNAN,
S/O.LATE NARASIMHAN POTTI, AGED 57 YEARS,AISWARYA,
KAITHAVALAPPU LANE, THATHAMPALLY WARD,
ARYED SOUTH VILLAGE, ALAPPUZHA.**

BY ADV. SRI.K.V.SADANANDA PRABHU

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 3001 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF FINAL JUDGMENT DATED 31/3/2015 IN OS NO.500/10 OF SUB COURT, ALAPPUZHA
- P2: TRUE COPY OF APPEAL MEMORANDUM OF APPEAL (AS. NO.112/2015 DATED 30/11/2015 FILED BY THE PETITIONER AND OTHERS BEFORE THE DISTRICT COURT, ALAPPUZHA
- P3: TRUE COPY OF STAY PETITION IN IA.NO. 1684/2015 IN AS. NO.112/2015 DATED 30/11/2015
- P4: TRUE COPY OF DELAY PETITION IN IA. NO.1683/2015 IN AS. 112/2015 DATED 30/11/2015 BEFORE THE DISTRICT COURT, ALAPPUZHA.
- P5: TRUE COPY OF E.P NO.106/2015 IN OS. 500/2010 ON THE FILES OF SUB COURT, ALAPPUZHA DATED 3/7/2015

RESPONDENT(S)' EXHIBITS:

- R(A): TRUE COPY OF THE CASE STATUS PRINTOUT IN THE APPEAL SEARCHED AND OBTAINED IN RELATION TO THE APPEAL A.S.53/15.
- R(B): TRUE COPY OF THE PRINTOUT OF A SEARCH COPY IN RELATION TO EXT.P2

/TRUE COPY/

P.A.TO JUDGE

sts

K. ABRAHAM MATHEW, J.

O.P.(C)No.3001 of 2015

Dated this the 15th day of December, 2015

J U D G M E N T

The petitioner was the first defendant in OS.500 of 2010 on the file of Sub Judge, Alappuzha. A final decree for partition has been passed. The petitioner has filed AS.112 of 2015 challenging the final decree. There was a delay in filing the appeal. So she has filed an application to condone the delay. It has not been disposed of. Meanwhile, the respondent has filed execution petition for delivery of his share. The prayer in this OP is to stay the delivery of the property.

2. Heard.

3. It is submitted on behalf of the respondent that the petitioner had earlier filed an appeal as AS 53 of 2015 and it was abandoned by her on the ground that she was not interested in proceeding with the appeal. Learned counsel for the petitioner submits that the appeal was instituted in a wrong name and that was the reason for abandoning the appeal. I do not want to make any observation on the merits of the arguments. But Article

227 of the Constitution cannot be invoked to grant stay of the execution petition. The appellate court has already seized of the matter. The petitioner may move that court for appropriate reliefs.

With the above observation this OP is closed. The appellate court shall try to dispose of the delay condonation petition filed in the appeal within one month from the date of receipt or production of a copy of this judgement provided the respondent has already entered appearance there.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge