

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

OP(C).No. 3116 of 2015 (O)

**OS 73/2001 of SUB COURT, MAVELIKKARA
EP 413/2013 of PRL.SUB COURT, THRISSUR**

PETITIONER/2ND DEFENDANT :

**ROSH MOHAN, AGED 40 YEARS,
S/O. MOHAN, MADAKAVIL, ENCHAMOODU P.O.,
CHERPPU, THRISSUR - 680 561.**

**BY ADVS.SRI.M.H.HANIL KUMAR
SRI.M.R.DHANIL**

RESPONDENTS/PLAINTIFF :

- 1. DAISY VARGHESE, AGED 58 YEARS,
CHRISTIAN, RESIDING AT ROHINI VILLA,
PUNTHALA ERAM MURI, VENMONY VILLAGE,
CHENGANNUR P.O., KOTTAYAM DISTRICT - 689121.**
- 2. HANEEFA, AGED ABOUT 55 YEARS, S/O. SULTHAN,
RESIDING AT VALAMKOTTU, CHALAKKUDY VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR - 680307.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE PLAINT IN OS NO. 73/2001 ON THE FILES OF SUB COURT
MAVELIKKARA.
- P2: COPY OF THE JUDGMENT IN OS NO. 73/2001 DT 20/12/2003 ON THE FILES OF
SUB COURT MAVELIKKARA.
- P3: COPY OF THE DECREE O.S. NO. 73/2001 DT 20/12/2003 ON THE FILES OF
SUB COURT MAVELIKKARA.
- P4: COPY OF THE NOTICE RECEIVED BY THE PETITIONER IN EP NO. 413/2013 IN
OS NO. 73/2001 FROM SUB COURT THRISSUR.
- P5: COPY OF THE APPLICATION FILED BEFORE THE SUB COURT MAVELIKKARA
IN IA NO. 725/2014 IN O.S. NO. 73/2001.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K.ABRAHAM MATHEW J.

O.P.(C)No.3116 of 2015

Dated this the 18th day of December, 2015

JUDGMENT

Petitioner was the second defendant in O.S.No.73 of 2001 of Sub Court, Mavelikkara. There were two prayers in the suit, one for a realisation of Rs.1,00,250/- from the first defendant and the other for a mandatory injunction directing both defendants to do certain acts. An ex parte decree was passed. The prayer for mandatory injunction was refused. The court failed to take notice that there was no prayer to realise the amount from the petitioner-second defendant and it passed a decree for realisation of the amount from him also. The petitioner has filed I.A.No.725 of 2014 to set aside the decree. The prayer in this Original Petition is to direct the sub Judge to dispose it of as expeditiously as possible and to stay the proceedings in E.P.No.413 of 2013.

2.Heard.

3. I have perused Ext P1 plaint. The prayer was to realise the amount from the first defendant alone. But unfortunately the court has passed a decree for money against the petitioner also. Once the illegality is brought to the notice of the court, it should correct the mistake. It shall not wait for the party to file an application under Section 152 of the Code of Civil Procedure. This can be done by the court suo motu. It can treat I.A.No. 725 of 2014 as an application filed under Section 152 of the Code of Civil Procedure and pass

appropriate orders.

In the result, this Original Petition is disposed of with the above direction. Meanwhile, execution of the decree against the petitioner is stayed till the trial court passes appropriate orders.

Sd/-
K.ABRAHAM MATHEW
JUDGE

cms

/True copy/

P.S.to Judge