

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C).No. 2342 of 2014 (O)

**I.A. NO. 173/2014 IN O.S. NO. 740/2008 OF ADDITIONAL MUNSIFF'S COURT,
CHERTHALA**

PETITIONER/PETITIONER/NO PARTY IN THE SUIT :

**SURESH KUMAR, AGED 38 YEARS,
S/O.RAMANAN, PARIKATHARA,
THURAVOOR SOUTH VILLAGE,
SOUTH MURI, CHERTHALA TALUK,
ALAPPUZHA DISTRICT-688532.**

**BY ADVS.DR.V.N.SANKARJEE
SRI.S.SIDHARDHAN
SRI.PRATHAP. S.R.K.
SMT.R.UDAYA JYOTHI**

RESPONDENTS/RESPONDENTS/PLAINTIFF 1 & 2 :

- 1. SAHADEVAN, AGED 66 YEARS,
S/O.KUNJUNNI, PATTTACHIRA, VALAMANGALAM SOUTH MURI,
THURAVOOR SOUTH VILLAGE, CHERTHALA TALUK,
CHERTHALA -688532.**
- 2. OMANA, AGED 64 YEARS,
W/O.SAHADEVAN, PATTACHIRA, VALAMANGALAM SOUTH MURI
THURAVOOR SOUTH VILLAGE, CHERTHALA TALUK,
CHERTHALA-688532.**
- 3. ANNAMMA KURIAN,
W/O.KURIAN, RESIDING AT THAIKKATTU THARA,
THURAVOOR SOUTH VILLAGE, VALAMANGALAM SOUTH MURI,
CHERTHALA TALUK, CHERTHALA-688532.**
- 4. RAMANAN, AGED 60 YEARS,
RESIDING AT PARIKKATHARA, THURAVOOR SOUTH VILLAGE,
SOUTH MURI, CHERTHALA TALUK, ALAPPUZHA -688532.**

R1 & R2 BY ADV. SRI.C.G.RAJ KUMAR

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

OP(C).No. 2342 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: COPY OF THE PLAINT IN O.S.740/2008
- EXT.P2: COPY OF THE SALE DEED BEARING NO.1378/2009
- EXT.P3: COPY OF THE I.A.173/2014 IN O.S.740/2008 ON THE FILE OF
ADDITIONAL MUNSIFF COURT.
- EXT.P4: COPY OF THE WRITTEN STATEMENT DATED 06.01.2014
- EXT.P5: COPY OF THE ORDER DATED 21.05.2014 PASSED BY THE
ADDITIONAL MUNSIFF, CHERTHALA.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

B. KEMAL PASHA, J.

.....
O.P.(C) No.2342 of 2014
.....

Dated this the 28th day of May, 2015

J U D G M E N T

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Petitioner is challenging Ext.P6 order passed by the Additional Munsiff's Court, Cherthala in IA.173/2014 and OS.740/2008. According to the petitioner, he had purchased 14 cents of property from the 1st defendant in the suit in the year 2009. The said property is lying at the western side of the plaint schedule property. The suit was filed by respondents 1 and 2 as OS.740/2008 against defendants 1 and 2, who are respondents 3 and 4 herein. The 4th respondent herein has also got 10 cents of property lying at the western side of the plaint schedule property.

2. The total extent of the property owned by the 3rd respondent herein was 24 cents, out of which 10 cents of property was given as *kudikidappu* and from the said *kudikidappukaran*, the 4th respondent purchased the same. The remaining 14 cents was purchased by the petitioner herein. As the boundary, which has to be fixed, is the boundary separating the properties of the petitioner and the 4th respondent situated at the western side of the plaint schedule property, and also the plaint schedule property, the petitioner has sought for getting him impleaded in the suit by filing Ext.P3 IA. The said application has been dismissed by the court below through Ext.P6 order by holding that the sale deed, by which the petitioner claims title over the 14 cents of property at the western side, has not been produced before the court below and further that the purchase of the property by the petitioner is a *transfer pendente lite*.

2. Heard.

3. Both the grounds highlighted by the court below to dismiss the IA and to pass Ext.P6 are not legally sustainable. The transfer of the property by the 3rd respondent to the petitioner cannot be treated as a *pendente lite* transaction as the said property is not one coming within the plaint schedule property. Admittedly, the said property is lying at the western side of the plaint schedule property. The suit is for fixation of boundary in between these two properties along with that of the 4th respondent. Regarding the sale deed, the petitioner has explained that the sale deed in respect of his property was produced before a bank for obtaining loan and, therefore, he could not produce the document. According to the learned counsel for the petitioner, the petitioner would procure a certified copy of the document in order to produce it before the court below. It cannot be said that the production of the sale deed is a condition precedent to sustain an application for getting him impleaded in the suit. Ext.P6 is not legally

sustainable and, therefore, the same is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Ext.P6 is set aside. Ext.P3 IA stands allowed. The court below is directed to proceed with the suit.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/28/05

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PA to Judge