

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

OP(C).No. 2594 of 2014 (O)

OS 54/2008 OF MUNSIF COURT, NEYYATTINKARA

.....

PETITIONER(S)/PLAINTIFF:

ASOKAN, AGED 60 YEARS,
S/O.MADHAVA PANICKER, RESIDING AT SREEPURI SADANAM,
PUNNAVOOR, KUALASSERI, MARANALLOOR VILLAGE.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENT(S)/DEFENDANTS:

1. M.BAHULAYAN,
S/O.MADHAVAN, RESIDING AT FLAT NO.1,
THREE MOORTHY CLASSIC, GURU PIMPLE, PUNE - 27,
DAPPODI, PIN - 411 027, MAHARASHTRA STATE.
2. B.RAMACHANDRAN,
RESIDING AT SECTOR NO.15, SIVAJI NAGAR, CHEMPOOR,
BHANDHI, BOMBAY FROM ROADARIKATHU PUTHEN VEEDU,
PULAYANKUZHITHALANIRA, KOOVALASSERI, KOOVALASSERI P.O.,
MARANALLOOR VILLAGE, NEYYATTINKARA TALUK,
TRIVANDRUM - 695 121.

R1 BY ADVS. SRI.M.RAMASWAMY PILLAI
SMT.PREETHY R. NAIR

R2 BY ADVS. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.BENOJ C AUGUSTIN
SRI.PRATHAP PILLAI
SRI.SEBIN THOMAS
SRI.VIVEK V. KANNANKERI
SMT.J.KASTHURI
SRI.VISHNU BHUVANENDRAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

OP(C).No. 2594 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE PLAINT IN O.S.NO.54/2008 ON THE FILE OF THE
HON'BLE MUNSIFF'S COURT, NEYYATTINKARA DATED 16.01.2008.

EXHIBIT P2. TRUE COPY OF THE I.A.NO.5734/2014 IN O.S.NO.54/2008
DATED 30.09.2014.

EXHIBIT P3. TRUE COPY OF THE I.A.NO.6017 OF 2014 IN O.S.NO.54/2008
DATED 14.10.2014.

EXHIBIT P4. TRUE COPY OF THE ORDER DATED 17.10.2014 IN I.A.NO.6017/2014 IN
O.S.NO.54/2008 OF THE HON'BLE MUNSIFF'S COURT, NEYYATTINKARA.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms**v**/

B. KEMAL PASHA, J.

.....
O.P.(C) No.2594 of 2014
.....

Dated this the 31st day of July, 2015

J U D G M E N T

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The suit is originally one filed for a declaration that the property was purchased by the plaintiff in the name of the 1st defendant and the petitioner is the person entitled to the property. A further relief of declaration has been sought for to the effect that the sale deed dated 10.09.1998 executed by the 1st defendant to the 2nd defendant is a sham document. By way of release deed, a decree of perpetual injunction has been sought for.

2. Subsequently, the plaintiff has filed an application for deleting relief No.(a) relating to declaration. That was allowed and the plaint was amended in such a way by deleting relief No.(a). Consequently, the averments in support of relief No.(a) have become inconsequential. Therefore, the petitioner wanted to recast the issues framed by the court below, for which Ext.P3 IA was filed. It seems

that the court below, through Ext.P4 order, has allowed the IA in part and refused the removal of issues 2, 5 and 6.

3. Heard both sides.

4. The suit, as it presently stands, is one for injunction simplicitor. The question of possession alone need be considered. The question relating to title does not arise for consideration in the suit, especially when relief No. (a) claimed in the plaint has been deleted. Issues 2, 5 and 6 as well as a portion of issue No.(1) are exclusively regarding title. Issues 2, 5 and 6 need not be considered at all. As far as issue No.(1) is concerned, it relates to title and possession. That issue also has to be recast.

In the result, this O.P.(Civil) is disposed of directing the court below to delete issues 2, 5 and 6 and to recast issue No.(1) accordingly.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/31/07

// True Copy //

PA to Judge