

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

OP(C).No. 2699 of 2014 (O)

**I.A.NO.3117/2013 IN IA.NO.2738/2012 IN OS.NO.741/1995 OF PRINCIPAL SUB COURT,
IRINJALAKUDA**
.....

PETITIONER(S):

**VISWANATHAN,
S/O.ITTITHARA VASU, VADAMA, VADAMA P.O.,
TRICHUR - 680 736.**

**BY ADVS.SRI.T.M.CHANDRAN
SRI.S.SUJITH**

RESPONDENT(S):

**DAVIS,
S/O.PAREKKADAN @ KAVALAKKADAN,
KOCHU PYLOTH, VADAMA,
VADAMA P.O., TRICHUR - 680 736.**

**BY SRI.GRASHIOUS KURIAKOSE, SENIOR ADVOCATE
ADV. SRI.M.M.ANTO**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 2699 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE AGREEMENT DATED 19/02/1995.

EXHIBIT P2: TRUE COPY OF DECREE DATED 25/08/2001 IN O.S.NO. 741/1995.

EXHIBIT P3: TRUE CPY OF DOCUMENT NO. 514/2013 DATED 21/02/2013.

**EXHIBIT P4: TRUE COPY OF THE APPLICATION ISSUED BY THE PRINCIPAL SUB
JUDGE FOR MUTATING THE PROPERTY.**

EXHIBIT P5: TRUE COPY OF THE ORDER DATED 01/06/2013.

**EXHIBIT P6: TRUE COPY OF ORDER DATED 28/12/2013 PASSED BY THE
ADDL.TAHSILDAR, MUKUNDAPURAM.**

EXHIBIT P7: TRUE COPY OF PETITION DATED 13/07/2013.

**EXHIBIT P8: TRUE COPY OF THE OBJECTION DATED 07/02/2014 FILED BY
RESPONDENT.**

**EXHIBIT P9: TRUE COPY OF THE ORDER DATED 05/06/2014 PASSED BY THE
PRINCIPAL SUB COURT, IRINJALAKUDA.**

RESPONDENT(S)' EXHIBITS:

**EXT.R1(a): TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN
IA.NO.2738/2012 DTD.29.9.2012.**

**EXT.R1(b): TRUE COPY OF THE DRAFT SALE DEED SUBMITTED BY THE
RESPONDENT BEFORE THE EXECUTION COURT.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. BHAVADASAN, J.

O.P.(C). No. 2699 of 2014

Dated this the 5th day of March, 2015.

JUDGMENT

The limited grievance in this original petition under Article 227 of the Constitution of India is regarding the schedule to the sale deed in respect of a room which belonged to the respondent herein which has been agreed to be sold to the petitioner herein as per Ext.P1 agreement for sale. It was a middle room among the three rooms owned by the respondent. As usual there was a breach on the part of the respondent and that led to a suit. The suit was decreed and Ext.P2 is the decree. In terms of the decree, it is said that Ext.P3 was executed through court. It is not in dispute that both the parties were directed to file draft sale deeds and they did so. But the draft sale deed produced by the respondent was accepted. The court below thereafter informed the petitioner about the mutation that has to be effected and so done. But when the petitioner

went to pay tax in the village office, the Village Officer took objection and then on verification of the sale deed, the petitioner found certain recitals in the sale deed which was not in terms of the agreement and that caused difficulties to him. He therefore filed Ext.P7 application for appropriate corrections to be made in the sale deed in terms of the decree and in terms of the agreement for sale. That was dismissed by an one line order.

2. Learned counsel appearing for the petitioner apart from complaining about the laconic order, also pointed out that it is only fair that the sale deed be executed in terms of the agreement for sale and the decree and there can be no objection to the said procedure being adopted since it is only in terms of the decree.

3. Learned Senior Counsel Shri. Gracious Kuriakose, appearing for the respondent contended that the petitioner can only get what he bargained for and nothing else. He can have only the property covered by the sale

deed which was merged with the decree and only in terms of the decree the deed could be executed.

4. Objection is taken with regard to two aspects in the sale deed. It is contended by the learned counsel for the petitioner that a reading of the sale deed would indicate that the room that is alleged to have been sold now belongs to the vendor himself and that would be further clear from the subsequent narration of the schedule and also that there is a conspicuous change of boundaries with respect to what is contained in agreement for sale and in the decree. That ought to have been corrected.

5. There can be no objection for the above submission. The result is that the agreement for sale and judgment and decree are not one and the same. A perusal of the sale deed would show that there is difference in the recital and it cannot be said that the apprehension expressed by the petitioner is without foundation. It is only proper that the court below be directed to draw up the sale

deed in terms of the agreement for sale and decree in the suit.

This Original Petition is allowed and the court below is directed to redraft the sale deed in terms of the agreement for sale and in terms of the decree. If such requirement is carried out, the petitioner may take such steps as are available to him, i.e., to pay tax and effect mutation and other requirements for peaceful enjoyment of the property.

sb.

P. BHAVADASAN,
JUDGE