

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

OP(C).No. 2756 of 2014 (O)

OS 123/2010 of SUB COURT,KATTAPPANA
.....

PETITIONER(S):

**MOHAMMED BASHEER, AGED 64,
S/O.LATE KOCHUTHAMPI RAWTHER,
RESIDING AT KUNNAKKAL HOUSE, KODIKUTHY KARA,
PERUVANTHANAM VILLAGE, PEERUMEDU TALUK,
IDUKKI DISTRICT, NOW RESIDING AT KUNNAKKAL HOUSE,
PARAVOOR, ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.JOMON K.CHACKO**

RESPONDENT(S):

- 1. P.K.ZACHARIAH, AGED 57,
S/O.KOCHUTHAMPI RAWTHER, RESIDING AT KUNNAKKAL HOUSE,
KODIKUTHY KARA, PERUVANTHANAM VILLAGE, PEERUMEDU TALUK,
IDUKKI DISTRICT - 685 560.**
- 2. NARGIS ZACHARIAH, AGED 37,
W/O.ZACHARIAH, RESIDING AT KUNNAKKAL HOUSE,
KODIKUTHY KARA, PERUVANTHANAM VILLAGE, PEERUMEDU TALUK,
IDUKKI DISTRICT - 685 560.**

**BY ADVS. SRI.T.I.ABDUL SALAM
SRI.PHILIP T.VARGHESE**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 13-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 2756 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE PHOTOSTAT COPY OF THE PLAINT IN O.S.NO. 123/2012 ON THE FILES OF SUB COURT, KATTAPPANA.

EXHIBIT P2: TRUE PHOTOSTAT COPY OF THE PLAINT IN O.S.NO. 101/2010 ON THE FILES OF SUB COURT.

EXHIBIT P3: TRUE PHOTOSTAT COPY OF O.S.NO. 155/2008 ON THE FILES OF MUNSIFF'S COURT, PEERUMEDU.

EXHIBIT P4: TRUE PHOTOSTAT COPY OF THE RESTRATION PETITION FILED AS I.A.NO. 490/2012 IN O.S.NO. 101/2010 ON THE FILES OF SUB COURT, KATTAPPANA.

EXHIBIT P5: TRUE PHOTOSTAT COPY OF DELIVERY ORDER DATED 27/10/2014.

EXHIBIT P6: TRUE PHOTOSTAT COPY OF THE I.A.NO.1024/2014 IN O.S.NO. 123/2012.

EXHIBIT P7: TRUE PHOTOSTAT COPY OF THE DELAY PETITION AS I.A.NO. 1023/2014.

EXHIBIT P8: TRUE PHOTOSTAT COPY OF THE E.A.NO. 176/2014 IN E.P.NO. 38/2013.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. BHAVADASAN, J.

O.P.(C). No. 2756 of 2014

Dated this the 13th day of January, 2015.

JUDGMENT

The limited prayer in this petition is for a direction to the court below to dispose of Exts.P6 and P7 applications before proceeding with the execution petition.

2. The petitioner is the sole defendant in O.S. 123 of 2012 on the file of Sub Court, Kattappana which is a suit for recovery of possession on the strength of title. There are several litigations between the parties. Ex-parte decree was obtained by the respondent herein and the decree was put in execution. According to the petitioner, delivery has been ordered. The petitioner then filed I.A. 1024 of 2014 seeking to have the ex parte decree set aside. Since there is delay, he has also filed I.A. 1023 of 2014 to condone the delay in filing the application to set aside the ex parte decree. It is

contended that if, before the disposal of the above two applications, property is delivered, the petitioner will be put to irreparable loss and injury.

3. Learned counsel for the respondent pointed out that this Court may direct the court below to dispose of Exts. P6 and P7 applications within a time frame and till then execution proceedings may be kept in abeyance.

In the light of the stand taken by both sides, this Original Petition is disposed of directing Sub Court, Kattappana to take up Exts. P6 and P7 applications and dispose of the same as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. Execution proceedings shall be kept in abeyance for a period of 45 days from today.

P. BHAVADASAN,
JUDGE

sb.