

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

OP(C).No. 2760 of 2014 (O)

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(O.S.238/2007 OF PRINCIPAL SUB COURT, THALASSERY)

PETITIONERS:

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1. V.K. MAHMOOD AGED 66 YEARS  
S/O.MOIDU  
PRESENTLY RESIDING AT NAYYAM VEETIL HOUSE  
CHETTEMCOON, THALASSERY TALUK.
2. NAYYAM VEETIL KADEESU, AGED 74 YEARS  
D/O.KUNHI MAKKI, NAYYAM VEETIL HOUSE, CHETTAMCOON  
THALASSERY.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)  
SRI.K.ASHIS

RESPONDENTS:

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1. C T P FATHIMA JAMAL  
D/O.MAMMU, THALASSERY AMSOM, VADIAKAKAM DESOM  
THALASSERY TALUK - 670 101.
2. C T P KHAIRUNNISSA MAJEED  
D/O.MAMMU, NEAR CONOR VAYAL, THALASSERY- 670 101.
3. C T P MUSTHAFA  
S/O.MAMMU, CHETTAMCOON ROAD, THALASSERY TALUK- 670 101.
4. C T P SAMEER  
S/O.MAMMU, CHETTAMCOON ROAD, THALASSERY.
5. C T P KOULATH MAHMOOD  
D/O.MAMMU, CHETTAMCOON ROAD, THALASSERY- 670 101.
6. C T P HANEEFA  
S/O.MAMMU, CHETTAMCOON ROAD, THALASSERY.

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7. C T P RIZWANA HARIS

D/O.MAMMU, CHETTAMCOON ROAD, THALASSERY- 670 101.

R1 -R 7 BY ADV. SRI.B.KRISHNAN

R1 -R 7 BY ADV. SRI.R.PARTHASARATHY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25-02-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS :

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- P1- A TRUE COPY OF JENM ASSIGNMENT DEED BEARING NUMBER 1138/2014 DATED 28.5.2014.
- P2- A TRUE COPY OF TAX RECEIPT DATED 7.7.2014.
- P3- A TRUE COPY OF NOTICE ISSUED BY THALASSERY MUNICIPALITY DATED 1.10.2014.
- P4- A TRUE COPY OF EP 153/2014 BEFORE THE PRINCIPAL SUB JUDGE, THALASSERY.
- P5- A TRUE COPY OF THE COUNTER FILED BY THE 2ND PETITIONER IN EP 153/2014.

RESPONDENT'S EXHIBITS: NIL

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// True Copy //

P.A. To Judge.

smp

**P.BHAVADASAN, J.**

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**Original Petition (Civil) No.2760 OF 2014**  
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**Dated this the 25<sup>th</sup> day of February, 2015.**

**J U D G M E N T**

The petitioners before this Court seek to resist the execution of compromise decree to which the 2<sup>nd</sup> petitioner was a party, in a suit for partition.

2. The 2<sup>nd</sup> petitioner herein along with her brother were co-owners of the property in respect of which partition was applied for. During the pendency of the suit, brother died and his legal heirs were brought on the party array as respondents. A compromise was entered into between the parties and it was reduced to a decree and as per the decree so passed by the court concerned, plot A equalling to 5/15 shares was given to the 2<sup>nd</sup> petitioner and rest of the property i.e. 10/15 shares was given to the respondents. There was a tharavad house in the property. As per the compromise, it was agreed to by the parties that the 2<sup>nd</sup> petitioner shall vacate the property within 18 months from 18.03.2013. Since the 2<sup>nd</sup> petitioner did not vacate the premises

after the due period, execution was taken up by the respondents. In the meanwhile, it may be noticed that the 3<sup>rd</sup> respondent had assigned his share in the B schedule property in favour of the 1<sup>st</sup> petitioner. It may also be noticed that the 1<sup>st</sup> petitioner is none other than the son in law of the 2<sup>nd</sup> petitioner.

3. When the execution petition was filed, the 2<sup>nd</sup> petitioner resisted the same pointing out that she is a dependant of the 1<sup>st</sup> petitioner and the 1<sup>st</sup> petitioner being a co-owner among other respondents she is entitled to continue her residence in the property and her objection may be considered before any orders are passed.

4. Learned Judge concerned has taken up the matters for orders. Apprehending that the learned Judge may not consider the objections filed by the 2<sup>nd</sup> petitioner, petitioners have approached this Court seeking a direction to the lower court to consider the objection of the 2<sup>nd</sup> petitioner before final orders are passed.

It may not be in the interest of the 2<sup>nd</sup> petitioner at this point of time nor will it be proper for this Court to enter into the

legal issues involved in the matter for the simple reason that the court below has not passed orders in the execution petition yet. There is no reason to believe that the court below will not consider the objections filed by the 2<sup>nd</sup> petitioner before the court. The mere fact that execution petition has been taken up for orders by the execution court does not indicate that the court below will not bestow its attention to the claim raised by the 2<sup>nd</sup> petitioner. As to what right she would have in the property is a matter to be determined by that court. Anyhow, this is purely an anticipatory petition and there is no reason to believe that the court below will not act in accordance with law.

Observing so, this original petition is dismissed.

Sd/-

**P.BHAVADASAN**  
**JUDGE**

smp