

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

OP(C).No. 2784 of 2014 (O)

**(AGAINST ORDER DATED 12/11/2014 IN IA.NO.2132/2014 IN OS.NO.342/2013
BEFORE THE ADDITIONAL SUB COURT, KOTTAYAM)**

PETITIONER(S):

- 1. GOPALAKRISHNAN NAIR AGED 66 YEARS
S/O.PRABHAKARAN NAIR, NALANDA, ANICKAL WEST PO
ANICKADU VILLAGE, KOTTAYAM TALUK**
- 2. LAKSHMIKUTTYAMMA
D/O.DEVAKIYAMMA, LAKSHMI SADANAM, ANICKAD WEST PO
ANICKADU VILLAGE, KOTTAYAM TALUK**
- 3. RAJAGOPAL
S/O.PRABHAKARAN, THEKKETHUTHEKKETHIL HOUSE
ANICKADU VILLAGE, KOTTAYAM TALUK**

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENT(S):

**NOBI JOSE
S/O.JOSE, PANANTHANATHU HOUSE, NADACKAL
ERATTUPETTA 686 121.**

**R1 BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
R1 BY ADV. SRI.GEORGE VARGHESE KIZHAKKAMBALAM**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 27-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 COPY OF THE PLAINT IN OS NO. 342/2013 BEFORE THE ADDITIONAL SUB COURT, KOTTAYAM

EXHIBIT P1(A) COPY OF THE SALE AGREEMENT DATED 27/6/2012 REFERRED TO IN EXHIBIT P1 PLAINT

EXHIBIT P2 COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN OS NO.342/2013 BEFORE THE ADDITIONAL SUB COURT, KOTTAYAM

EXHIBIT P3 COPY OF TRHE INTERLOCUTORY APPLICATION DATED NIL FILED BY THE DEFENDANTS ON 7/11/2014 TO REMOVE THJE CASE FROM SPECIAL LIST

EXHIBIT P4 COPY OF THE COMMISSION APPLICATION DATED 7/11/2014 (IA NO.2132/20140 FILED BY THE DEFENDANTS IN OS NO. 342/2013 BEFORE THE ADDITIONAL SUB COURT, KOTTAYAM

EXHIBIT P5 COPY OF THE OBJECTION DATED 11/11/2014 FILED BY THE PLAINTIFF TO IA NO.2132/2014 COMMISSION IN OS NO.342/2013 BEFORE THE ADDITIONAL SUB COURT, KOTTAYAM

EXHIBIT P6 COPY OF THE ORDER DATED 12/11/2014 IN IA NO. 2132/2014 IN OS NO. 342/2013 BEFORE THE ADDITIONAL SUB COURT, KOTTAYAM

RESPONDENT(S)' EXHIBITS

NIL

R.AV

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PA to Judge

K.ABRAHAM MATHEW, J

O.P.(C)NO.2784 OF 2014

Dated this the 27th day of October, 2015

J U D G M E N T

Petitioners are the defendants in OS.342 of 2013 of Sub Court, Kottayam. The suit is filed by the respondent for refund of prepaid purchase price. The petitioners filed IA.2132 of 2014 to appoint a commissioner. The learned Sub Judge has dismissed it for the sole reason that it was highly belated.

2. Heard.

3. It is submitted that the matter was referred for mediation and as the mediation was not successful the records were sent back to the court. Immediately on receipt of the records the learned Sub Judge posted the case for trial. If this is correct the petitioners cannot be found fault with for not filing the application earlier. So I am inclined to grant the prayer.

In the result, this O.P is allowed. Ext.P6 order is set aside. IA.2132 of 2014 is allowed. The learned Sub Judge shall appoint a commissioner and fix his remuneration.

The suit shall be disposed of before the court closes for summer vacation in 2016.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

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PA to Judge