

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

OP(C) .No. 2811 of 2014 (O)

AGAINST THE ORDER IN I.A.NO.354/14 IN A.S.NO.18/14 OF SUB
COURT, KOYILANDY

PETITIONER/PETITIONER:

VADAKKE PALORAYIL SREEDEVI AMMA, AGED 45 YEARS,
W/O.BALAKRISHNAN, SWASTHAM, ATHOLI VILLAGE,
MODAKKALLUR DESOM, KOYILANDY TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT/RESPONDENTS:

CHETTIAMKANDI RAGHAVAN NAIR, AGED 67 YEARS,
S/O.KALYANI AMMA, AGRICULTURE, ULLIYERI AMSOM DESOM,
KOYILANDY TALUK-673323.

BY ADVS. SRI.JOHN K.GEORGE
SRI.E.C.BINEESH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-05-2015, ALONG WITH OP(C) NO. 2860/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 2811 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS :

P1:- COPY OF THE ORDER DTD 12/4/2013 IN FDIA NO 1615/2008 IN OS NO 35/2008 ON THE FILE OF THE MUNSIFF COURT, KOLIYANDY.

P2:- COPY OF THE MEDICAL CERTIFICATE DTD 11/5/2013.

P3:- COPY OF THE DELAY CONDONATION PETITION FILED TO CONDONE THE DELAY OF 276 DAYS, WHICH IS NUMBERED AS IA NO 354/2014 IN AS NO 18/14 ON THE FILE OF SUB COURT , KOYILANDY.

P4:- COPY OF THE PROCEEDING SHEET RECEIVED ON 28/3/2014 IN IA NO 354/2014 IN AS NO 18/14 ON THE FILE OF SUB COURT, KOLIYANDY.

P5:- COPY OF THE ORDER DTD 12/8/2014 IN IA NO 354/14 IN AS NO 18/14 ON THE FILE OF SUB COURT, KOYILANDY.

RESPONDENT'S EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/23/5/15

B.KEMAL PASHA, J.

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O.P.(C). Nos.2811 & 2860 of 2014

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Dated this the 22nd day of May, 2015

J U D G M E N T

A final decree has been passed in O.S.No.35 of 2008 of the Munsiff's Court, Koyilandy. The same was challenged in appeal. The appeal failed. Again a Second Appeal was filed before this Court as R.S.A. No.70 of 2012. This Court has gone through the matter, considered it at length and vide judgment dated 17.08.2012 has directed the Commissioner to make some modifications in the plan. It seems that strictly adhering to the directions of this Court, the Commissioner has made modifications in the plan and a correct plan has been furnished. It seems that once again the petitioner has challenged the said final decree passed by the court below, even though it was passed in

accordance with the directions of this Court. The said appeal was filed with a petition to condone the delay. The delay was condoned by the court below on condition that the petitioner pays an amount of ₹3,000/- as cost within the specified time limit. The cost was not paid within the specified time limit. Consequently, the delay petition was dismissed and the appeal was also dismissed. The same is challenged in O.P.(C). No.2811 of 2014.

2. The matter was taken up in execution and presently delivery has been ordered. O.P.(C) No.2860 of 2014 is filed challenging the order of delivery in execution.

3. Heard both sides.

4. On hearing both sides and on a perusal of the judgment passed by this Court in R.S.A.No.70 of 2012 and the plan produced by the Commissioner consequent to it, this Court does not find any illegality or irregularity in the modified plan as well as the consequent final decree passed by the court below. In fact, an appeal does not lie in the

matter. There is no merit in the appeal itself. Matters being so, any interference is not called for. Both these Original Petitions (Civil) are devoid of merit and are only to be dismissed, and I do so.

In the result, both these Original Petitions (Civil) are dismissed. In the nature of these Original Petitions (Civil), the parties shall bear their respective costs.

Sd/-

B.KEMAL PASHA
JUDGE