

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C).No. 3106 of 2014 (O)

IA NO.6830/13 & IA.7016/13 IN OS 642/08 OF IIND ADDL. SUB COURT, KOZHIKODE.

PETITIONER/PETITIONER & PLAINTIFF:

**E.REJEESH, AGED 42 YEARS,
S/O.MOIDEEN KOYA, EDATHIL HOUSE,
KARAPARAMBU, VENGARI AMSOM, DESOM,
KOZHIKODE TALUK.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENT(S)/RESPONDENTS & DEFENDANTS:

- 1. M/S.BENCY & COMPANY, A PARTNERSHIP FIRM,
PVH CHAMBERS, ANAKUZHAKARA, KUTTIKKATTOOR,
KOZHIKODE, REPRESENTED BY MANAGING PARTNER
P.V.HUSSAIN, AGED 72 YEARS, S/O.AMMOTTY HAJI,
STAR VIEW, KALATHINKUNNU AMSOM,
DESOM, KOZHIKODE TALUK-673 579.**
- 2. M/S.BENCY & COMPANY, REPRESENTED BY
MANAGING PARTNER MUHAMMED ABDUL KARIM FIZAL,
S/O.MUHAMMED HAJI, 24/2489, CHEMBAKA HOUSING
COLONY, POTTAMMEL JUNCTION, KUTHIRAVATTOM,
KOZHIKODE-673 016, KUTTULI AMSOM DESOM.**
- 3. M/S.PANTHALON RETAIL (INDIA) LTD.,
KNOWLEDGE HOUSE, SHYAM NAGAR, OFF JOGESWARI,
VIKHRADI LINK ROAD, LOGESWARI (E), MUMBAI-570 001.**
- 4. ZONAL MANAGER, M/S.PANTHALON RETAIL (INDIA) LTD,
FIRST AND SECOND FLOOR, PASAC LANE, NO.18/1,
10TH MAIN ASOKA PILLAR ROAD
JAYANAGAR, FIRST BLOCK, BANGLORE-567 001.**

**R2 BY ADVS. SRI.R.RAJESH KORMATH
SRI.SRIHARI**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 3106 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1. A TRUE COPY OF THE PLAINT IN OS 642/08 PENDING ON THE FILES
 OF THE IIND ADDL. SUB COURT, KOZHIKODE.
- EXT.P2. A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
 DEFENDANTS 3 AND 4 IN OS 642/08 PENDING ON THE FILES OF THE
 IIND ADDL. SUB COURT, KOZHIKODE.
- EXT.P3. A TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF IA NO.6830/2013
 FILED BY THE PETITIONER IN OS 642/08 OF IIND ADDL. SUB COURT,
 KOZHIKODE.
- EXT.P4. A TRUE COPY OF THE ORDER DATED 11/12/2013 IN IA NO.6830/13 IN
 OS 642/08 PASSED BY THE ADDL. SUB COURT, KOZHIKODE.
- EXT.P5. A TRUE COPY OF THE ORDER DATED 12/12/2013 IN IA NO.7016/13 IN
 IA NO.6830/2013 IN OS 642/08 OF IIND ADDL. SUB COURT,
 KOZHIKODE.

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

.....
O.P.(C) No.3106 of 2014
.....

Dated this the 28th day of May, 2015

J U D G M E N T

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The alleged contract in respect of OS.642/2008 is for the sale of a portion of a building, which was proposed to be constructed in the property. Subsequently, the building has been completed. On completion of the building, it seems that the same has been rented out to defendants 3 and 4. The plaintiff, who has allegedly entered into the contract of purchase of the portion of that building, has filed a suit for specific performance of the contract.

2. The suit was filed in the year 2008. It seems that on three occasions, the suit came up in the list. On the first two occasions, by assigning some reasons, the petitioner got the suit adjourned. On the third occasion of such attempt, the suit was dismissed for default. Subsequently, the same was restored. When the suit was included in the

list again, the petitioner came up with IA.6830/2013 for the appointment of a Commissioner and a Surveyor for identifying Plaint A and B schedule properties. The court below has chosen to dismiss the application through Ext.P4 order.

3. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent.

4. According to the learned counsel for the petitioner, respondents 3 and 4 have taken up a contention that the property is not identifiable and the property, which is agreed to be sold to the petitioner, is not now in existence. The said contention is apparently incorrect. A building has been put up in the property and the same has been given on lease to defendants 3 and 4. Therefore, the contention that no such property is in existence is not correct and such a question does not arise at all.

5. Another allegation of the petitioner in the IA was that the building was put up by violating the building rules.

Those questions do not arise in this suit for specific performance. The court below has rightly shown that if at all any identification of the property is required, that could be done at the time of execution of the decree that may be passed in the suit. I do not find any illegality, irregularity or jurisdictional error committed by the court below in passing Ext.P4, and the same does not call for any interference at all. This OP(Civil) is devoid of merits and is only to be dismissed, and I do so.

In the result, this OP(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/28/05

// True Copy //

PA to Judge