

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

OP(Crl.).No. 138 of 2014 (Q)

CRL.A.NO. 342/2014 OF PRINCIPAL SESSIONS COURT, ERNAKULAM

CRL.M.P.NO.956/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT- I, N.PARAVUR

PETITIONER(S) :

**SMITHA, AGED 35 YEARS,
W/O.SURESH KUMAR, SANKARADIYIL, DREAM VILLA,
SOUTH NALUVAZHI, ALUMPARAMBU ROAD, N.PARAVUR, PIN- 683 513.**

**BY ADVS.SRI.V.A.PRADEEP KUMAR
SMT.JENNY THANKAM**

RESPONDENT(S) :

- 1. SURESH KUMAR, AGED 45 YEARS,
S/O.SANKARAN, SANKARADIYIL, DREAM VILLA,
SOUTH NALUVAZHI, ALUMPARAMBU ROAD, N.PARAVUR, PIN- 683 513.**
- 2. SANKARAN, AGED 75 YEARS,
S/O.RAMAN PATTARI, SANKARADIYIL, DREAM VILLA,
SOUTH NALUVAZHI, ALUMPARAMBU ROAD, N.PARAVUR, PIN- 683 513.**
- 3. SARASWATHI, AGED 64 YEARS,
W/O.SANKARAN, SANKARADIYIL, DREAM VILLA,
SOUTH NALUVAZHI, ALUMPARAMBU ROAD, N.PARAVUR, PIN - 683 513.**
- 4. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

**R1 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS
R2 & R3 BY ADVS. SRI.P.M.BENZIR
SRI.G.G.MANOJ
SARATH PRASAD**

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 28-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1:** TRUE COPY OF THE APPEAL MEMORANDUM IN CRL.APPEAL NO.342/2014 ON THE FILE OF THE PRL. SESSIONS COURT, ERNAKULAM.
- EXHIBIT-P2:** TRUE COPY OF THE STAY PETITION IN M.P.NO.1562/2014 IN CRL.APPEAL NO. 342/2014 ON THE FILE OF THE PRL. SESSIONS COURT, ERNAKULAM.
- EXHIBIT-P3:** TRUE COPY OF THE ORDER PASSED BY THE JFCM-I, N.PARAVUR IN M.P.NO.956/2014 IN M.C.NO.14/2014 DATED 12/06/2014.
- EXHIBIT-P4:** TRUE COPY OF THE ORDER PASSED BY THE JFCM-I, N.PARAVUR IN M.P.NO.425/2014 I M.C.NO.14/2014 DATED 13/02/2014.
- EXHIBIT-P5:** TRUE COPY OF THE PETITION IN M.P.NO.956/2014 IN M.C.NO.14/2014 OF JFCM-I, N.PARUR.
- EXHIBIT-P6:** TRUE COPY OF THE OBJECTION IN M.P.NO.956/2014 IN M.C.NO.14/2014 OF JFCM-I, N.PARUR.
- EXHIBIT-P7:** TRUE COPY OF THE ORDER IN M.P.NO.956/2014 IN M.C.NO.14/2014 OF JFCM-I, N.PARUR DATED 02/06/2014.
- EXHIBIT-P8:** TRUE COPY OF THE JUDGMENT IN O.P(C)NO. 1336/2014 OF THE HONOURBLE HIGH COURT.
- EXHIBIT-P9:** TRUE COPY OF THE RATION CARD OF THE PETITIONER AND 1ST RESPONDENT DATED 24/12/2008 ISSUED BY THE TALUK SUPPLY OFFICER, N.PARUR.`

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(A):** THE PHOTOCOPY OF THE OWNERSHIP CERTIFICATE NO.R1-LDS.R18074/14 DATED 30.07.2014 ISSUED BY THE NORTH PARAVUR MUNICIPALITY.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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O.P.(Crl) No.138 of 2014

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Dated this the 28th day of January, 2015

JUDGMENT

It seems that an ex parte decree was procured by the respondents herein with a view to defeat the right of residence of the petitioner in the building and her rights over the property. That decree was passed in a suit in which no summons was served on the petitioner. By producing that ex parte decree before the Judicial First Class Magistrate's Court-I, North Paravur, Ext.P3 order was procured by the respondents. Through Ext.P3 order, the learned Magistrate has chosen to vacate Ext.P7 order dated 02.06.2014 in Crl.M.P.No.956/2014 in M.C.No.14/2014. Ext.P3 is also passed without hearing the petitioner. Matters being so, Ext.P3 is liable to be quashed.

In the result, this O.P.(Crl) is allowed and Ext.P3 order dated 12.06.2014 passed by the Judicial First Class Magistrate's Court-I, North Paravur in MC 14/2014 is

quashed, and Ext.P7 order dated 02.06.2014 passed by the said court in Crl.M.P.No.956/2014 in M.C 14/2014 is restored. The Sub Inspector of Police, North Paravur Police Station is directed to provide all necessary assistance to the petitioner for the implementation of the order.

The Registry is directed to forward a copy of this order to the Officer-in-charge in the North Paravur Police Station at the earliest.

B.KEMAL PASHA, JUDGE

stu

//True copy//

P.A to Judge