

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

OP (RC).No. 117 of 2014 (O)

**AGAINST THE ORDER/JUDGMENT IN EA NO.611/14 IN EPNO.276/2010 IN OP(RCP)
81/2009 of PRINCIPAL MUNSIF COURT, THIRUVANANTHAPURAM**

PETITIONER(S)/PETITIONER:

**VASANTHA, AGED 67 YEARS
D/O KALALAMMA, RESIDING AT VARUVILAKATHU VEEDU
TC 67/537, PACHALLOOR P.O, THIRUVANANTHAPURAM 695027**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE**

RESPONDENT(S)/COUNTER PETITIONER:

**SREENU,, AGED 38 YEARS
S/O MANIYAN, RESIDING AT VTC 43/1005(4) SWAYA NIVS
MUTTATHARA, THIRUVANANTHAPURAM DISTRICT 695008**

**BY ADV. SRI.M.R.ANANDAKUTTAN
BY ADV. SMT.M.A.ZOHRA
BY ADV. SRI.MAHESH ANANDAKUTTAN**

**THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 04-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (RC).No. 117 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE E.A NO 590 OF 2014 IN E.P NO 276 OF OP(RCP) NO 81 OF 2009

EXHIBIT P1 TRUE COPY OF THE E.A NO 811 OF 2014 IN E.P NO 276 OF OP(RCP) NO 81 OF 2009

EXHIBIT P3 TRUE COPY OF THE COUNTER AFFIDAVIT IN E.A NO 611 OF 2014 DATED 26-08-2014

EXHIBIT P4 TRUE COPY OF THE ORDER DATED 27-08-2014 IN E.A NO 611 OF 2014 IN E.P NO 276 OF 2010 OF OP(RCP) NO 81 OF 2009 ON THE FILE OF THE PRINCIPAL MUNSIF, THIRUVANANTHAPURAM

RESPONDENT(S)' EXHIBITS NIL

//True Copy//

PA TO JUDGE

Rp

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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OP (RC) No. 117 of 2014
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Dated this the 4th day of March, 2015

J U D G M E N T

Antony Dominic, J.

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This original petition is filed challenging Ext.P4, an order passed by the Principal Munsiff Court, Thiruvananthapuram dismissing EA No.611/14 filed by the petitioner in EP No.276/10 in OP (RCP) 81/09. By the said EA, the petitioner sought appointment of an Advocate Commissioner and it was that prayer which was declined by the court.

3. The background facts of the case are that 5 cents of land and building bearing No.67/537 was sold to the respondent landlord by one Sri.Bijukumar and his sister Smt.Vijayasree, whose mother is the petitioner herein. According to the respondent, he thereafter demolished the building and reconstructed the new one. That building was assigned building No.TC 67/539(2). This building was rented out to Sri.Bijukumar, one of the original vendors. Subsequently, seeking his eviction, respondent filed RCP No.81/09

before the Rent Control Court, Thiruvananthapuram which resulted in an *ex parte* order allowing the petition. Seeking execution of the said order, the landlord filed EP No.276/10. In that EP when delivery was attempted, Smt.Vijayasree, one of the original vendor, obstructed the delivery by filing EA No.1002/10 where she claimed ownership over the building bearing TC No.67/537. In that EA, evidence was recorded and the applicant and the petitioner herein were examined as PWs 1 and 2. Finally, the Court dismissed the EA by its order dated 31/8/13. That order has become final. The execution proceedings continued and when attempt was again made for delivery, the petitioner, who in the earlier application filed by her daughter was examined as PW2, filed EA No.590/14 obstructing the delivery and again claiming ownership over building No.67/537. It was thereafter that she filed EA No.611/14 seeking appointment of a Commissioner for ascertaining the nature of construction and other details. It is this application which is rejected by the Court.

4. Having heard the learned counsel for both parties and as rightly found by the Court below, the claim of the petitioner is over building bearing No.TC 67/537, whereas the order of eviction

passed by the Rent Control Court in RCP No.81/09, which is sought to be executed in EP No.276/10, is from building No.TC 67/539(2). This, therefore, means that in EP No.276/10, it is unnecessary and irrelevant to enquire into the condition relating to the building No.T.C.67/537.

5. We, therefore, do not find any reason to take a view different from what has been taken by the execution court in the impugned order.

RCR is dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge