

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 35355 of 2009 (L)

PETITIONER:

**SAJINI,
D/O. PILASSERY GOPALAN, PATTANCHERRY HOUSE
P.O. FEROKKE, NELLOOR AMSOM AND DESOM
KOZHIKODE TALUK AND, DISTRICT.**

BY ADV. SRI.K.M.FIROZ

RESPONDENTS:

**1. THE SUB REGISTRAR, KOZHIKODE,
THE OFFICE OF THE SUB REGISTRAR, KOZHIKODE.**

**2. PRABHAKARAN,
S/O. PILLASSERY GOPALAN, AGED 67 YEARS
KALATHUKUNNU AMSOM, DESOM
KOZHIKODE TALUK AND DISTRICT.**

R2 BY ADV. SRI.NIRMAL. S

R1 BY GOVERNMENT PLEADER SRI. MANOJ P. KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE APPLICATION DATED 1.12.2009 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPNDENT SUB-REGISTRAR, KOZHIKODE FILED UNDER SECTION 34(3)(A) OF THE REGISTRATION ACT READ WITH SECTION 71
- P2 : TRUE COPY OF THE RELEVANT PORTION OF THE CERTIFIED COPY OF DOCUMENT NO.232 OF 1941
- P3 : TRUE COPY OF THE PLAINT IN THE SUIT O.S. NO.100 OF 2007, SECOND ADDITIONAL SUB COURT, KOZHIKODE
- P4 : TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER IN SUPPORT OF THE APPLICATION FOR COMMUNICATING INJUNCTION ORDER TO THE SUB REGISTRAR OFFICE, KOZHIKODE.

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 35355 of 2009 (L)

Dated this the 11th day of August, 2015

J U D G M E N T

The petitioner was aggrieved with the non consideration of Ext.P1 application, said to have been filed under Section 34(3)(A) of the Registration Act, 1908.

2. Admittedly, there were civil disputes pending between the petitioner and the 2nd respondent, with respect to a property covered by Ext.P2 title deed. The petitioner and the 2nd respondent are siblings and the petitioner had filed a partition suit numbered as O.S. No.100/2007 before Sub Court-II A, Kozhikode, wherein the 2nd respondent herein was the 1st respondent. The other sharers were also impleaded as defendants. The petitioner is also said to have been issued with an injunction order, restraining the defendants from alienating and committing waste in the property.

3. In the course of the proceedings the 2nd respondent's defence was stricken off by the Sub Court and the 2nd respondent was before this Court with W.P.(C) No.30861/2009, wherein there was a stay of proceedings of the suit, ordered. In the meanwhile, the petitioner apprehended that the 2nd respondent would alienate the property in his possession and create documents to bring in third party interest. The petitioner also filed an application before the Sub Court, produced at Ext.P4, wherein the Sub Court was requested to communicate the order of injunction to the 1st respondent. However, since there was a stay in operation in the writ petition, the Sub Court refused to do so and hence, the petitioner was before this Court, with the above writ petition.

4. The learned counsel for the petitioner would seek for consideration of Ext.P1, whereas the learned counsel appearing for the 2nd respondent would specifically point

out that the contours of Section 34(3) would not necessarily warrant a consideration of the said application. The learned Government Pleader would also submit that Ext.P1 is filed on a mere apprehension and no document has been till date presented. In the nature of the orders to be passed in the above writ petition, this Court is of the opinion that the said question need not be considered.

5. Admittedly, the writ petition filed before this Court is now disposed of and there is no stay of the proceedings in the suit. The suit O.S. No.100/2007 is still pending before Sub Court-II A, Kozhikode. In such circumstance, if any attempt is made by the 2nd respondent for one, the same would be hit by lis pendens, and in any event the petitioner would be entitled to seek for communication of the injunction order at this stage. In such circumstance, there is no requirement as of now to direct the 1st respondent to consider Ext.P1.

The writ petition would stand disposed of leaving open the remedy of the petitioner to approach the Sub Court

Sd/-
K.VINOD CHANDRAN,
JUDGE