

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

MONDAY, THE 5TH DAY OF NOVEMBER 2012/14TH KARTHIKA 1934

OP(C).No. 2398 of 2011 (O)

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OS.599/2010 of I ADDL.SUB COURT,TRIVANDRUM

PETITIONER(S)/PETITIONERS:

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1. SAJU KUMAR,S/O.CYLUS,AILINERA,  
SASTHAVATTOM,AYIROORPPARA,THIRUVANANTHAPURAM.
2. CYLUS, S/O.YOVAS NADAR, PANAYAKKUZHI VEEDU  
NEAR SWAMIYAR MADOM,CHENKOTTUKONAM,THUNDATHIL  
KARIYAVATTOM,THIRUVANANTHAPURAM.

BY ADV. SRI.SUNNY ZACHARIA

RESPONDENT(S):

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MOHAMMED SALI, S/O.ABDUL KHADER,  
LAILALAYAM, PATTATHIL,THONNAKKAL.P.O  
MELTHONAKKAL, VILLAGE,THIRUVANANTHAPURAM-695317.

R,R1                      BY ADV. SRI.G.SUDHEER

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05-11-2012,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN O.P.(C) NO.2398 OF 2011

PETITIONER'S EXTS:

- EXT.P1 TRUE COPY OF THE PURCHASE CERTIFICATE 31/96 DATED 13.5.1996 IN SM.NO.4/96 OF THE LAND TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P2 TRUE COPY OF THE SETTLEMENT DEED NO.2609/06 DATED 26.6.2006 OF KAZHAKKUTTOM SRO.
- EXT.P3 TRUE COPY OF THE SALE DEED NO.299/2007 DTD. 18.1.2007 OF KAZHAKKUTTOM SRO.
- EXT.P4 TRUE COPY OF THE TAX RECEIPT OF THE RESPONDENT DATED 26.2.2007.
- EXT.P5 TRUE COPY OF THE NOTICE DATED 23.3.2010 ISSUED BY THE FIRST ADDITIONAL TAHSILDAR, THIRUVANANTHAPURAM.
- EXT.P6 TRUE COPY OF THE PLAINT IN O.S.NO.599/2010 DATED 26.5.2010 IN THE FILE OF THE ADDITIONAL SUB COURT, THIRUVANANTHAPURAM.
- EXT.P7 TRUE COPY OF THE COMMUNICATION DATED 29.3.2011 ISSUED FROM THE COURT TO THE SUB REGISTRAR IN THE MATTER OF I.A.NO.2864/2010.
- EXT.P8 TRUE COPY OF THE WRITTEN STATEMENT DATED 28.3.2011 FILED BY THE PETITIONERS.
- EXT.P9 TRUE COPY OF THE I.A.NO.2085/2011 FOR AMENDMENT.
- EXT.P10 TRUE COPY OF THE OBJECTION TO I.A.NO.2085/2011
- EXT.P11 CERTIFIED COPY OF THE ORDER OF THE HON'BLE FIRST ADDITIONAL SUB COURT IN I.A.NO.2085/2011
- EXT.P12 TRUE COPY OF THE I.A.NO.2864/2010 DATED 26.5.2010 FOR ATTACHMENT BEFORE JUDGMENT.
- EXT.P13 TRUE COPY OF THE ORDER IN I.A.NO.2864/2010
- EXT.P14 TRUE COPY OF THE OBJECTION TO I.A.NO.2864/2010.

//TRUE COPY//

P.S. TO JUDGE.



**V.CHITAMBARESH, J.**

**O.P.(C) No.2398 of 2011**

**Dated this the 5<sup>th</sup> day of November, 2012**

**J U D G M E N T**

The court below has by the order impugned allowed an application for amendment of the plaint. The suit as originally filed was one for return of the amount paid as consideration on executing a sale deed. The suit was laid on the premise that the defendants had no title and the certificate of purchase obtained by them was fake.

2. The petitioners/plaintiffs contended that the defendants have subsequently perfected their title and possession over the property conveyed. It is stated that the defendants/respondents have entered into a settlement with the original owner of the property by name Chembakavalli. It is on that premise is the amended relief of declaration of title and possession over the property sought.

3. The dispute centers around the title of the defendants and the validity of the sale deed executed by them to the petitioners. The amendment of the nature sought does not therefore alter the character of the suit. The question whether

the amended relief could be granted in the suit is altogether a different question. That is a matter to be decided by the court below at the time of adjudicating the amended relief on the basis of the additional written statement filed.

4. I hasten to add that only additional prayers are sought to be incorporated by way of amendment. Admissions, if any, contained in the original plaint remain unaltered by the amendment allowed. Whether the amendment has the effect of taking away the admission already made will also be considered by the court below.

I do not find any infirmity in the order impugned. The original petition fails and is dismissed.

**V.CHITAMBARESH,  
Judge.**

nj.