

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 19TH DAY OF JANUARY 2022 / 29TH POUSHA, 1943

OP(C) NO. 1927 OF 2021

SEEKING DIRECTION DIRECTING THE ADDITIONAL MUNSIFF'S COURT OF
KOCHI TO ALLOW THIS PETITIONER TO DEPOSIT THE COST OF RS.10,000/-

PASSED IN IA NO.425/2018 IN OS NO.71/2014

PETITIONER/IST PETITIONER/IST DEFENDANT

C.G.THAMPI

S/O GOPALAN, AGED 80 YEARS, CHELAKKATT HOUSE, H.M.T
COLONY, UC COLLEGE P.O, ALUVA, ERNAKULAM DISTRICT.

BY ADV K.P.UNNI

RESPONDENTS/2ND PETITIONER AND RESPONDENTS/PLAINTIFF/AND DEFENDANTS

2 TO 5

1 JYOTHIS

S/O VIJAYAN, AGED 44 YEARS, THALAPPILLY HOUSE,
NAYARAMBALAM VILLAGE, KOCHI TALUK.

2

AYSHA, W/O PURUSHAN, AGED 80 YEARS, KAIMALANKARA HOUSE,
CHERAI P.O, PALLIPPURAM VILLAGE, KOCHI TALUK.

3

LEENA, W/O RAJAN, AGED 76 YEARS, PUNNAKATHARAYIL
HOUSE, MUZHUVILANGU, MATHILAKAM P.O, KODUNGALLOOR,
THRISSUR DISTRICT.

4

SOJA

W/O GOPALAKRISHNAN, AGED 79 YEARS,
J.M PARADISE, FLAT NO.54, THAMMANAM, PALARIVATTOM P.O,
ERNAKULAM DISTRICT.

5

JOSHI

SON OF GOPALAN, AGED 74 YEARS, CHELAKKATT HOUSE,
EDAVANAKKAD P.O, ERNAKULAM DISTRICT.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
19.01.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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JUDGMENT

Order in I.A 425/2018 in O.S 71/2014 on the file of the additional Munsiff Court, Kochi is under challenge in this original petition filed under Article 227 of the Constitution of India.

2. Heard the learned counsel for the petitioner. I have perused the order impugned. As per the order impugned, the learned Munsiff considered an application filed under Order 9 rule 13 CPC along with an application filed under section 5 of the limitation Act. Finally, petition was allowed on payment of cost of Rs. 10000/-, to be paid on or before 3.1.2020. The same order made it clear that if the cost not paid as directed the application would stand dismissed. The petitioner herein failed to pay the cost and accordingly application filed under Order 9 Rule 13, along with delay petition were dismissed. The said orders are appealable under Order 43 Rule 1(d). Now comes the significance of power of this Court under Article 227 of the Constitution of India. In cases where remedy by way of appeal is available under the Code of Civil Procedure, whether the remedy Article 227 of the Constitution of India is available ?

3. While answering the query, a decision of the Apex Court reported

in 2019 KHC 7006 Virudhunagar Hindu Nadargal Dharma paribalana Sabai and Others Vs Tuticorin Educational Society and Others, assumes significance. Going by the ratio in the above decision it is emphatically clear that wherever the proceedings are under the Code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence the High Court ought not to have entertained the Revision under Article 227 of the Constitution of India, in a case where a specific remedy of appeal is provided under the code of Civil Procedure. Further the availability of such a remedy under the Code of Civil Procedure to be construed as near to total bar for the remedy under Article 227 of the Constitution of India In view of the above legal position, this OP is not maintainable before this court.

Therefore, the OP is dismissed with liberty to the petitioner to approach the Appellate Court as per law.

sd/-

A. BADHARUDEEN, JUDGE

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APPENDIX OF OP(C) 1927/2021

PETITIONER EXHIBITS

- Exhibit P1 COPY OF SALE AGREEMENT DATED 28/06/2013
- Exhibit P2 COPY OF EXPARTE JUDGMENT AND DECREE DATED
07/04/2015
- Exhibit P3 COPY OF EXECUTION PETITION NO.27/2016
DATED 14.03.2016
- Exhibit P4 COPY OF ORDER PASSED ON 03.10.2020 BY THE
ADDITIONAL MUNSIFF'S COURT AT KOCHI IN IA
NO.425/2018 IN OS NO.71/2014.

//TRUE COPY//

PA TO JUDGE