

**Nazar Vs. Mamachan**

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**SooperKanoon Citation :** [sooperkanoon.com/1013468](http://sooperkanoon.com/1013468)

**Court :** Kerala

**Decided On :** Jan-29-2013

**Judge :** Honourable Mr. Justice a.V.Ramakrishna Pillai

**Appellant :** Nazar

**Respondent :** Mamachan

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI TUESDAY, THE 29TH DAY OF JANUARY 2013 9TH MAGHA 193 OP(C).No. 2028 of 2011 (O) ----- OS. NO.33/2011 of PRINCIPAL SUB COURT,KOLLAM ----- PETITIONER(S) : ----- NAZAR, THANKAM, UDAYAMARTHANDAPURAM CHERRY, MUNDACKAL VILLAGE, KOLLAM

001. BY ADV. SRI.B.SURESH KUMAR RESPONDENT(S): ----- MAMACHAN, SHOBHA BHAVAN, KUMMALLOOR CHERRY,KUMMALLOOR P.O., ADICHANALLOOR VILLAGE,KOLLAM

573. THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: NS OP(C).No. 2028 of 2011 (O) APPENDIX PETITIONER(S) EXHIBITS : EXT.P1 : COPY OF THE MEMORANDUM OF THE PLAINT IN OS NO.33/2011 DATED 10 01.2011

FILED BEFORE THE PRINCIPAL SUBORDINATE JUDGE'S COURT, KOLLAM. EXT.P2 : COPY OF THE APPLICATION FOR ATTACHMENT DATED 10 01.2011 FILED BY THE PLAINTIFF BEFORE THE PRINCIPAL SUBORDINATE JUDGE'S COURT, KOLLAM. EXT.P3 : COPY OF THE WRITTEN STATEMENT DATED 7 02.2011 FILED BY THE DEFENDANT BEFORE THE PRINCIPAL SUBORDINATE JUDGE'S COURT, KOLLAM. EXT.P4 : COPY OF THE APPLICATION DATED 10 02.2011 FILED BY THE DEFENDANT FOR LIFTING THE ORDER OF ATTACHMENT BEFORE THE PRINCIPAL SUBORDINATE JUDGE'S COURT, KOLLAM. EXT.P5 : COPY OF THE OBJECTION DATED NIL FILED BY THE PLAINTIFF BEFORE THE PRINCIPAL SUBORDINATE JUDGE'S COURT, KOLLAM. EXT.P6 : COPY OF THE APPLICATION DATED 11 02.2011 FILED BY THE PLAINTIFF BEFORE THE PRINCIPAL SUBORDINATE JUDGE'S COURT, KOLLAM. EXT.P7 : COPY OF THE ORDER DATED 4 06.2011 IN I.A.NO.207/2011 AND IA NO.760/2011 IN OS NO.33/2011 PASSED BY THE PRINCIPAL SUBORDINATE JUDGE'S COURT, KOLLAM. EXT.P8 : COPY OF THE AGREEMENT FOR SALE DATED 24 03.2008 EXECUTED BY THE DEFENDANT IN FAVOUR OF THE PLAINTIFF. RESPONDENT(S) EXHIBITS : NIL / TRUE COPY / NS P.A. TO JUDGE A.V.RAMAKRISHNA PILLAI, J.

----- O.P(C) No.2028 of 2011  
----- Dated this the 29th day of January, 2013  
JUDGMENT The plaintiff in O.S.No.33 of 2011 on the file of the Subordinate Judge's Court, Kollam is the petitioner. The sole defendant in the suit is the respondent. The suit is for recovery of advance amount paid at the time of execution of an agreement for sale. A conditional attachment was ordered ex parte and the respondent was directed to furnish security for the amount or to show cause why the attachment not be made absolute.

2. Later, the attachment was lifted on an application filed by the respondent on the ground that there appeared a correction in the agreement (Ext.P8) relied on by the petitioner, regarding the year in which the agreement was executed. Apparently, the year 2007 was corrected as 2008 at three places in the agreement. But, the petitioner would allege that he had purchased the stamp paper, on which the agreement was engrossed, on 11.3.2008, which is evident from the seal on the

facing sheet of Ext.P8 agreement. OP(C)2028/11 -:2:- 3. As the correction created a doubt in the mind of the court, invoking Rule 43 of Kerala Manufacture and Sale of Stamp Rules, 1960, the petitioner filed Ext.P6 application to summon the vendor and to examine him, to prove the genuineness of Ext.P8 agreement. This was rejected by the court below by the impugned order.

4. Arguments have been heard and the impugned order was perused. Though notice was served on the respondent, there was no response.

5. As the petitioner wanted to establish before the trial court that the correction appearing in Ext.P8 agreement was not ill-motivated, he filed the petition on which the impugned order was passed. This Court is of the view that it was not proper on the part of the court below to deny the petitioner the opportunity to establish his case.

6. On a totality of the facts and circumstances of this case, I am of the view that the impugned order has to be interfered with by exercising the powers under Article 227 of the Constitution of India. In the result, the petition is allowed. Ext.P7, the order impugned, is set aside and Ext.P6 application is allowed. Parties shall mark appearance OP(C)2028/11 -:3:- before the Sub Court, Kollam on the next posting date. The petitioner shall be given an opportunity to take steps to summon the vendor, as ordered. No order as to costs. sd/- A.V.RAMAKRISHNA PILLAI  
JUDGE krj

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