

**Abraham Jose Rockey, vs P.E.Thomas,**

**Abraham Jose Rockey, vs P.E.Thomas,**

**SooperKanoon Citation :** [sooperkanoon.com/1295259](https://sooperkanoon.com/1295259)

**Court :** Kerala

**Decided On :** Mar-12-2024

**Judge :** Honourable Mr.Justice C. Jayachandran

**Appeal No. :** OP(C)/1353/2021

**Appellant :** Abraham Jose Rockey,

**Respondent :** P.E.Thomas,

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN  
TUESDAY, THE 12TH DAY OF MARCH 2024 / 22ND PHALGUNA, 1945  
OP(C) NO. 1223 OF 2021 IN OS NO.11 OF 2018 OF ASSISTANT  
SESSIONS COURT/PRINCIPAL SUB COURT/COMMERCIAL COURT,  
KOCHI PETITIONERS/RESPONDENTS 1 TO 3 IN I.A./PLAINTIFFS:-

1 MR.P.E.THOMAS, AGED 64 YEARS, S/O.EACEY, PAREMURI  
HOUSE, AROOR P.O., AROOR VILLAGE, AROOR, ALAPPUZHA-688  
534. 2 MR.S.SASANGAN, S/O. SIVARAMAN AGED 52 YEARS, X/1562,  
THAMARAPARAMBU, KOCHI P.O., FORT KOCHI VILLAGE, KOCHI-  
682 501. 3 MR.SUNNY L. MALAYIL, S/O.M.L.LEWIS, AGED 50 YEARS,

XV/151 D, CHESSY ROAD, MUNDAMVELI.P.O., RAMESWARAM VILLAGE, KOCHI-682 507. BY ADVS. C.R.SYAMKUMAR SOORAJ T.ELENJICKAL P.A.MOHAMMED SHAH ASWIN KUMAR M. J. HELEN P.A. ARUN ROY

RESPONDENTS/PETITIONER & RESPONDENTS 4 & 5 IN I.A./DEFENDANTS:

1 MR.ABRAHAM JOSE ROCKY AGED 33 YEARS, S/O.ROCKY CHANDY NEROTH, NEROTH HOUSE, K.P.VALLON ROAD, KADAVANTHRA P.O., KADAVANTHRA DESOM, ELAMKULAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM-682 020. 2 MRS.QUEENIE HALLEGUA @ QUEENIE SAMY HELLEGUA, W/O. LATE SAMUEL HALLEGUA, AGED 82 YEARS, RESIDING AT C.C 6/197, SYNAGOGUE LANE, MATTANCHERY P.O., RAMESWARAM EAST DESOM, MATTANCHERY VILLAGE, KOCHI TALUK, ERNAKULAM-682 002. 3 MRS. JULIET HALLEGUA W/O. LATE JOSEPH HALLEGUA, AGED 82 YEARS, RESIDING AT C.C 6/200, SYNAGOGUE LANE, MATTANCHERY P.O., RAMESWARAM EAST DESOM, MATTANCHERY VILLAGE, KOCHI TALUK, ERNAKULAM-682 002. BY ADVS. K.P.SREEKUMAR DINESH MATHEW J.MURICKEN THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12.03.2024,

ALONG WITH OP(C).1353/2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN TUESDAY, THE 12TH DAY OF MARCH 2024 / 22ND PHALGUNA, 1945 OP(C) NO. 1353 OF 2021 IN OS NO.11 OF 2018 OF ASSISTANT SESSIONS COURT/PRINCIPAL SUB COURT/COMMERCIAL COURT, KOCHI PETITIONER/PETITIONER: ABRAHAM JOSE ROCKEY, AGED 36 YEARS, S/O.ROCKEY CHANDY NEROTH, NEROTH HOUSE,

K.P.VALLON ROAD, KADAVANTHARA P.O., KADAVANTHARA  
DESOM, ELAMKULAM VILLAGE, KANAYANNUR TALUK,  
ERNAKULAM-682 020. BY ADV K.P.SREEKUMAR  
RESPONDENTS/RESPONDENTS:

1 P.E.THOMAS, AGED 64 YEARS, S/O.EACEY, PAREMURI HOUSE,  
ARoor P.O., AROOR VILLAGE, AROOR, ALAPPUZHA - 688 534. 2  
S.SANGAN, S/O.SIVARAMAN, AGED 52 YEARS, X/1562,  
THAMARAPARAMBU, KOCHI P.O., FORT KOCHI VILLAGE, KOCHI-  
682 501. 3 SUNNY L. MALAYIL, S/O.M.K.LEWIS, AGED 50 YEARS,  
XV/151D, CHESSY ROAD, MUNDAMVELI P.O., RAMESWARAM  
VILLAGE, KOCHI-682 507. 4 MRS.QUEENIE HALLEGUA @ QUEENIE  
SAMY HALLEGUA, W/O.LATE SAMUEL HALLEGUA, AGED 82  
YEARS, RESIDING AT CC.6/197, SYNAGOGUE LANE,  
MATTANCHERY P.O., RAMESWARAM EAST DESOM,  
MATTANCHERY VILLAGE, KOCHI TALUK, ERNAKULAM-682 002.

..3.. 5 MRS.JULLET HALLEGUA, W/O. LATE JOSEPH HALLEQUA,  
AGED 83 YEARS, RESIDING AT CC.6/200, SYNAGOGUE LANE,  
MATTANCHERY P.O., RAMESWARAM EAST DESOM,  
MATTANCHERY VILLAGE, KOCHI TALUK, ERNAKULAM-682 002. BY  
ADVS. C.R.SYAMKUMAR DINESH MATHEW J.MURICKEN  
P.A.MOHAMMED SHAH ASWIN KUMAR M J HELEN P.A. ARUN ROY  
SHAHIR SHOWKATH ALI THIS OP (CIVIL) HAVING COME UP FOR  
ADMISSION ON 12.03.2024, ALONG WITH OP(C).1223/2021, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..4..

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

Dated this the 12th day of March, 2024 Both these Original Petitions arise from the  
suit, O.S. No.11/2018, of the Subordinate Judges Court,

Kochi. O.P.(C)No.1223/2021 is preferred

appointing a Commissioner. O.P.(C) No.1353/2021 is preferred by the first defendant in the suit, aggrieved by Ext.P3 order, which dismissed I.A. No.2/2020 for appointment of a receiver; or alternatively for a direction to deposit the rent arrears in the court. Both these applications were disposed of by virtue of the impugned common

**order.**

..5..

2. The basic facts to be taken note of are as

follows: The plaintiffs in the suit [petitioners in O.P.(C) No.1223/2021] were tenants, originally under a Trust. The property including the tenanted premises were transferred to the first defendant

in the suit [first respondent in

property cannot be sold to the first defendant in the suit and for a declaration that the sale deed is void ab initio. In the suit, two interlocutory applications were preferred vide Exts.P7 and P9, both by the first respondent in the suit, the former seeking appointment of an Advocate Commissioner to prepare a sketch showing the area occupied by the first defendant and the respective areas occupied by the tenants including the plaintiffs; and the latter - Ext.P9 -, for ..6.. appointment of a receiver in the context of collection of rents or in the alternative to deposit the rent arrears in the court. By virtue of the impugned common order, Ext.P7 application

was allowed and Ext.P9 was dismissed

being dismissed.

3. Heard the learned counsel appearing for the respective parties.

4. Having heard the learned counsel appearing for the respective parties, this Court is not in a

position to uphold the impugned common order, which allowed Ext.P7 application for appointment of Advocate Commissioner. This Court notice that the suit is one for a declaration that the sale deed is void ab initio, instituted at the instance of three tenants in the premises. There is no ..7.. reason, whatsoever, specifically stated in Ext.P7 application, as to why a Commission has to be issued and why a sketch showing the area occupied by the first defendant/owner and those occupied by the tenants, is required to be drawn up. The

prayer sought for vide Ext.P7 appears to be completely unconnected with the main relief sought for in the suit. The finding of the learned Sub Judge that it will not cause any harm to anybody, is no reason to allow a Commission application. It has to be borne in mind that a Commission for local inspection is allowed, by recognising the status of the Commissioner as an officer of the court and to bring before the Court the state of

affairs prevailing in the locality, which is revealed by a local inspection, so as to enable the court to render a judgment in a satisfactory manner. Needless to say that such an application should have a proximate connection with the scope of the suit, especially the relief sought for ..8.. therein. In the circumstances, the impugned common

### **order in so far it allows Ext.P7 Commission**

application cannot be sustained and the same will stand set aside.

5. Coming to the impugned common order, which

dismissed Ext.P9, here again, this Court is not in a position to approve the course adopted by the learned Sub Judge. It may be true that the request for appointment of a receiver is not fully well conceived, since the same was sought for collection of rent only. However, the finding based on the contention raised by respondents 1 to 3 in O.P.(C) No.1353/2021, that for recovering arrears of rent, the landlord will have to institute a fresh suit and such a relief cannot be secured in a suit preferred by the tenants, etc., cannot be countenanced. It is one thing to be noted that the suit has been instituted by three among the tenants challenging a sale deed in ..9..

favour of the first defendant in the suit. Therefore, the status of plaintiffs as tenants of the buildings is admitted, wherefore, it goes without saying that the tenants cannot aspire to continue in the premises without paying the agreed

rent. If it is a case where the

justified, as long as the tenants express their desire to pay the rent as per the directions of the court or to deposit such rent before the court. However, a stand that for recovering rent, a separate suit has to be instituted, etc., appears to be far fetched, which is also against the fundamental obligation of a litigant to prosecute a case, admitting his status as a tenant. Learned counsel for the petitioner in O.P.

(C) No.1223/2021 would invite the attention of

this Court to Ext.P10 objection, wherein the tenants/plaintiffs have categorically stated that ..10.. they are prepared to pay the rent, as and when directed by the trial court. Since there is a dispute with respect to the competence of the landlord, let the rent arrears be deposited before the court, so that the amount can be appropriately released to the landlord, who is ultimately found entitled and eligible, based on the outcome of the subject suit.

6. In the circumstances, the impugned common

**order is set aside. Ext.P7 I.A.No.1/2020 will**

stand disallowed. Ext.P9 I.A.No.2/2020 will stand allowed in respect of the alternative prayer, with a direction to the tenants/plaintiffs to deposit the rent arrears before the trial court and with a further direction to continue to deposit such rent during the pendency of the suit. The Original Petitions are disposed of as above. ..11.. Learned counsel for the petitioner in O.P.(C) No.1353/2021 expressed an apprehension that a commission application may be required to be filed in future during the pendency of the suit and the observations made by this Court may stand in his way. This Court will clarify that such commission application, if any, filed will be decided independently by the trial court on merits; and not influenced by the observations made by this Court in this judgment. It is further directed that the arrears of rent shall be deposited before the court on or

before 8th April, 2024.

Sd/- C. JAYACHANDRAN JUDGE Skk//18.03.2024 ..12.. APPENDIX OF OP(C) NO.1353/2021 PETITIONERS EXHIBITS:- EXHIBIT P1 TRUE COPY OF THE IA NO.2/2020 IN O.S.NO.11/2018 DATED 3.1.2020 FILED BEFORE THE SUB COURT, KOCHI EXHIBIT P2 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY RESPONDENTS 1 TO 3 DATED 8.1.2020 IN I.A.NO.2/2020 IN O.S.NO.11/2018. EXHIBIT P3 TRUE COPY OF THE ORDER DATED 8.7.2021 IN I.A.NO.2/2020 IN O.S.NO.11/2018 OF THE SUB COURT, KOCHI. ..13.. APPENDIX OF OP(C) NO.1223/2021 PETITIONERS EXHIBITS:- EXHIBIT P1 TRUE COPY OF THE PLAINT IN OS NO.11/2018 OF THE SUBORDINATE JUDGE, KOCHI DATED 01.03.2018 EXHIBIT P2 TRUE COPY OF THE TRUST DEED 96/2011 OF KOCH SRO DATED 30.03.2011 EXHIBIT P3 TRUE COPY OF SALE DEED 2088/2017 OF KOCHI SRO DATED 05.07.2017 EXHIBIT P4 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST DEFENDANT DATED 08.07.2019 EXHIBIT P5 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND DEFENDANT DATED 08.07.2019 EXHIBIT P6 TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 3RD DEFENDANT DATED 04.08.2019 EXHIBIT P7 TRUE COPY OF IA 1/2020 FILED BY THE 1ST RESPONDENT DATED 03.01.2020 EXHIBIT P8 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS IN IA 1/2020 DATED 08.01.2020 EXHIBIT P9 TRUE COPY OF IA 1/2020 FILED BY THE 1ST RESPONDENT DATED 03.01.2020 EXHIBIT P10 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS IN IA 2/202 DATED 08.01.2020 EXHIBIT P11 TRUE COPY OF THE COMMON ORDER IN IA

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