

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

CRP.No. 338 of 2013 ()

AGAINST ORDER IN EP.229/2012 IN OS.682/2004 OF PRINCIPAL MUNSIF COURT,
PALAKKAD

REVISION PETITIONER(S)/DECREE HOLDERS/PLAINTIFFS:

1. KARTHYAYANI AMMA,
W/O LATE SETHUMADHAVAN NAIR, PALLIPOTTA HOUSE
PIRAYIRI AMSOM AND DESOM PALAKKAD TALUK AND DISTRICT 678019
2. KRISHNA KUMAR, AGED 45 YEARS
S/O KARTHYAYANI AMMA, PALLIPOTTA HOUSE
PIRAYIRI AMSOM AND DESOM
PALAKKAD TALUK AND DISTRICT 678019
3. USHA , AGED 39 YEARS
D/O KARTHYAYANI AMMA, PALLIPOTTA HOUSE
PIRAYIRI AMSOM AND DESOM
PALAKKAD TALUK AND DISTRICT 678019

BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF

RESPONDENT(S)/RESPONDENTS/ DEFENDANT:

MOHANA KRISHNAN,
S/O SANKARA NARAYANAN, PIRAYIRI AMSOM AND DESOM
PALAKKAD TALUK AND DISTRICT 678019

R1 BY ADV. SRI.P.B.KRISHNAN
R1 BY ADV. SMT.GEETHA P.MENON
R1 BY ADV. SRI.N.AJITH
R1 BY ADV. SRI.P.M.NEELAKANDAN
R1 BY ADV. SRI.P.B.SUBRAMANYAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
13-08-2015, ALONG WITH OPC.952 OF 2014, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

B. KEMAL PASHA, J.

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C.R.P. No.338 of 2013

&

O.P.(C) No.952 of 2014

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Dated this the 13th day of August, 2015

ORDER

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A suit for injunction was filed in which Ext.A2(b) plan has become final and the same was accepted by the court below, on the basis of which, decree has been passed. Boundaries were sought to be fixed on the basis of Ext.A2(b) plan. EP No.229/2012 was filed by the plaintiffs/decreed holders. A senior lawyer of the Bar was directed to be appointed as Commissioner. It seems that the court below has chosen to appoint the very same Commissioner who had once visited the property and prepared a report and plan. The measurements about to be carried out by the Surveyor, who was assisting the

Commissioner, was allegedly obstructed by the decree holders. The matter was reported by the Commissioner through an interim report before the court below. Even though the same was objected to, the court below has gone to the extent of dismissing the EP as such. The same is under challenge.

2. In the meantime, the respondent in C.R.P.No.338/2013 has filed EP No.223/2013 before the court below for execution of the decree. Through O.P.(C) No.952/2014, the defendant has sought for the speedy disposal of the said EP.

3. Heard learned counsel for the decree holders as well as learned counsel for the defendant.

4. It seems that the main objection forwarded by the decree holders is that a triangular portion of their property noted in Ext.B2 plan comes within the road portion at the western side. It seems that in the plan a triangular portion at the north western corner of the property of the decree

holders comes on the said road as per Ext.A2(b) plan. Petitioners in C.R.P.No.338/2013 cannot presently contend that such portion should not come on the road. As per Ext.A2(b) plan, it can be seen that the base portion of the triangle is having a measurement of 5.6 metres.

5. The north western corner of the property of the plaintiffs is the meeting point of the western boundary having length of 14 metres, and the separating boundary of the plaintiffs' property and the defendant's property having a length of 34.2 metres. There cannot be any quarrel with regard to that aspect at present. The base line of the triangle has a length of 5.6 metres. The western boundary of the property of the plaintiffs cannot have a length of 14 metres plus 5.6 metres as is being presently contended.

6. The learned counsel for the plaintiffs has pointed out that the Commissioner, who has complained against the plaintiffs, was the Commissioner who was earlier appointed by the court below in the trial stage and that, the plan

prepared by the said Commissioner was not accepted. According to him, when the Commissioner attempted to carry out the measurements based on the earlier plan prepared by him, which was not accepted, the same was objected to.

7. Whatever it is, the court below ought not to have appointed the very same Commissioner in the matter for inviting further complaints. The court below ought to have appointed another senior lawyer of the Bar as Commissioner to carry out the measurements with the aid of Ext.A2(b) plan. Therefore, the impugned order in C.R.P.No.338/2013 is liable to be set aside.

In the result, C.R.P.No.338/2013 is allowed and the impugned order is set aside. EP No.229/2012 also is restored. Both the EPs shall be disposed of by the court below by appointing another senior lawyer of the Bar as Commissioner with the assistance of a Surveyor. The Commissioner shall be directed to carry out the

measurements with the aid of Ext.A2(b) plan. The court below shall dispose of the EP as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

O.P.(Civil) is disposed of.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/13/08

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PA to Judge