

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

CRP.No. 124 of 2015 ()

(FINDINGS ON ISSUE NO.1 IN OS 340/2013 OF II ADDITIONAL MUNSIF
COURT, ERNAKULAM DATED 10.12.2014)

REVISION PETITIONER/6TH DEFENDANT:

P.P.RAJEEV, S/O. PRABHAKARAN,
AGED 59 YEARS, PRABHAKARA NILAYAM, PAZHOOPARAMBIL HOUSE,
THEKKUMBHAGAM VILLAGE, KANAYANNUR TALUK, PIN-682 301.

BY ADV. SRI.ROY MATHEW

RESPONDENTS/PLAINTIFF AND DEFENDANTS 1 TO 5:

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1. P.S.RAJAPPAN, S/O. SUPPAYAN, AGED 57 YEARS,
PERIYAKAVIL HOUSE, PUTHIYAKAVU, TRIPUNITHURA P.O,
PIN-682 301, THEKKUMBHAGAM VILLAGE, KANAYANNUR TALUK
ERNAKULAM DISTRICT.
 2. M.K. PONNAMMA, W/O. LATE P.C. NATARAJAN, AGED 66 YEARS,
PERIYAKAVIL HOUSE, THEKKUMBHAGAM VILLAGE, TRIPUNITHURA P.O,
PIN-682 301,
 3. LATHA P.N, D/O. M.K. PONNAMMA, AGED 48 YEARS, PERIYAKAVIL
HOUSE, THEKKUMBHAGAM, TRIPUNITHURA-PO, PIN - 682301.
 4. GEETHA, D/O. M.K. PONNAMMA, AGED 48 YEARS, PERIYAKAVIL
HOUSE, THEKKUMBHAGAM, TRIPUNITHURA-PO, PIN - 682301.
 5. JAYASREE P.N, D/O. M.K. PONNAMMA, AGED 48 YEARS,
PERIYAKAVIL HOUSE, THEKKUMBHAGAM, TRIPUNITHURA-PO,
PIN - 682301.
 6. SMITHA P.N, D/O. M.K. PONNAMMA, AGED 32 YEARS,
PERIYAKAVIL HOUSE, THEKKUMBHAGAM, TRIPUNITHURA-PO,
PIN - 682301.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Sc1.

P.BHAVADASAN, J.

C.R.P. No.124 of 2015

Dated this the 25th day of March, 2015.

ORDER

Aggrieved by the order dated 10.12.2014 in O.S.No.340 of 2013, the 6th defendant before the court below has come up with this revision petition.

2. The suit is one for fixation of western and northern boundary of the plaint schedule property. There were other consequential reliefs also sought for in the plaint.

3. The petitioner herein contested the suit raising a preliminary issue, that suit was hit by the principles of *resjudicata*. His contention was that in the previous suit, the boundary was fixed and the present suit is nothing but an attempt is to get over the earlier decree. He also submitted that the suit is barred by Order II Rule 2 of C.P.C.

4. The court below considered the plea of *resjudicata* as a preliminary issue and came to the conclusion that in the earlier suit, the prayer for fixation of boundary was not

granted and therefore, present suit is not barred by *resjudicata*. It was also found that the suit is not barred under Order II Rule 2 of C.P.C.

5. The learned counsel appearing for the petitioner contended that in the earlier suit, there was determination of boundaries between the respective properties of the parties even though the decree as such has not been granted, the matter stands concluded. The said issue cannot be agitated to the different suit. It is also contended that on the basis of the determination of boundary in the earlier suit, the relief was granted as against the defendants. Therefore, the order of the court below is unsustainable.

6. It is significant to notice that the prayer for fixation of boundary in the earlier suit was declined for the reason that the legal heirs of one Natarajan who was the second plaintiff in the above suit were not impleaded. The present petitioner who prosecuted the suit, was denied the relief of fixation of boundary. The claim of the first plaintiff in the earlier suit was that the pathway belonged to the second plaintiff and the first plaintiff in the earlier suit had a right to use of pathway. Since

the legal heirs of the second plaintiff were not impleaded consequent on his death, the suit abated as far as he is concerned and the court therefore declined to grant relief regarding fixation of boundary.

7. Earlier decree was therefore confined to mandatory injunction directing the defendants in the earlier suit to demolish a portion of the building which encroached into the pathway and also restraining him from trespassing into the plaint schedule property.

8. The court below though found the commission report in the earlier suit had been accepted, the relief of fixation of boundary was not granted. True, there was such a contention by the defendant in that suit.

9. The court below found that there was no determination of the issue regarding fixation of boundary of properties between the parties and since relief in that regard was not granted, it will be deemed to have been rejected.

10. In the present suit, the plaintiff has sought for fixation of boundary. The contention that the present suit is dubious method adopted to get over the earlier decree cannot

be accepted. May be that the commission report in the earlier suit showing the boundaries of properties of parties in that suit accepted by the court. But, so long as there is no determination of issue regarding the boundaries of properties between parties, Section 11 of C.P.C., cannot be invoked.

11. The court below found that since the present plaintiff was defendants in the earlier suit, Order II Rule 2 of C.P.C. cannot be invoked.

12. It was the above facts which weighed with the court below in coming to the conclusion that present suit is not barred by *resjudicata*. It could not be said that the said finding is either perverse or contrary to record. The finding is justifiable.

This court finds no grounds to interfere with the order of the court below. The revision petition is without any merits and is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

Scl.