

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

OP(C) .No. 20 of 2015 (O)

PETITIONER:

SURESH, AGED 48 YEARS
S/O. MADHAVAN, CHETTIYANAPURATH HOUSE, PANURKARA
UDUMBANNUR VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

MADHAVAN, S/O. KELA,
VALLIKATIL HOUSE, P.O. PANNOOR
UDUMBANNOOR VILLAGE, THODUPUZHA TALUK-673001.

R1 BY ADV. SRI.P.ABANI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 02-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 20 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1- A TRUE COPY OF THE APPLICATION FILED AS IA NO. 276 OF 2014 IN OS NO 286 OF 07 DATED 10-2-2014 ON THE FILE OF THE MUNSIF COURT, THODUPUZHA.

EXHIBIT P2- A TRUE COPY OF THE IA NO. 277 OF 2014 IN OS NO. 286 OF 07 ON THE FILE OF THE MUNSIF COURT, THODUPUZHA DATED 10-2-2014.

EXHIBIT P3- A TRUE COPY OF THE COMMON ORDER PASSED IN IA NO. 276 OF 2014 AND IA NO. 277 OF 2014 IN OS NO. 286 OF 07 ON THE FILE OF THE MUNSIF COURT, THODUPUZHA DATED 19-9-2014.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

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A.HARIPRASAD, J.

O.P.(C) No. 20 of 2015

Dated this the 2nd day of July, 2015

JUDGMENT

The order under challenge is Ext.P3 passed by the learned Munsiff on two applications in a suit for fixation of boundary and recovery of possession. The applications are for review of the earlier order passed by the court and also for setting aside the ex parte decree passed in the suit.

2. The learned Munsiff dismissed both the applications finding that there was no merit in the applications and the delay in filing those applications were not properly explained.

3. I have heard the learned counsel for the petitioner and the contesting respondent.

4. The petitioner is the 6th defendant in the suit for fixation of boundary and recovery of possession. It is an admitted case that the 6th defendant obtained the

property during the pendency of the suit from other defendants. The impugned order shows that the 6th defendant was impleaded on 4.10.2011. That too, after dismissing his application for impleadment once, and later restoring the same.

5. The 6th defendant (petitioner herein) did not file any objection to the commission report in the case. The matter was posted for trial to 19.10.2012. On that date, the 6th defendant did not appear and an ex parte decree was passed in the suit. Later, he filed an application before the court below to set aside the ex parte decree. That application was allowed on condition that the 6th defendant should pay a cost of Rs.750/- to the opposite party. In spite of giving this opportunity, the cost was not paid. Hence, the petition to set aside the exparte decree was also dismissed. Thereafter, the 6th defendant approached the court below with the petitions with a delay of 301 days.

6. The court below, after considering facts elaborately, found that the 6th defendant has not stated any reason for not complying with the orders passed by the court. According to the learned counsel for the petitioner, the counsel appearing in the lower court did not inform the 6th defendant that the suit was put in the list and that lack of communication resulted in his abstinence from the court. However no evidence was produced before the court below, to find that there was lack of communication on the part of the counsel as contended by the 6th defendant. The court below, after considering the entire facts and circumstances, correctly dismissed the applications, finding that the attempt of the petitioner is only to prolong a litigation which has come to its logical end. It is seen from the records that the decree has been executed as early as on 14.01.2014. Therefore, the attempt of the petitioner is only to drag on the proceedings further, which was rightly rejected by

the court below. I find no illegality or irregularity in the order passed by the court below.

Hence the OP is dismissed.

Sd/-
A.HARIPRASAD
JUDGE

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