

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

OP(C).No.115 of 2015 (O)

**E.P NO.397/2010 IN O.S.NO.457/2003 OF THE PRINCIPAL MUNSIF COURT,
ERNAKULAM.**

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PETITIONER:

**MARADU MUNICIPALITY,REPRESENTED BY
SUPERINTENDENT IN CHARGE OF SECRETARY,
MARADU P.O,MARADU VILLAGE,
ERNAKULAM DISTRICT-682 304.**

**BY ADVS.SRI.SHAHUL HAMEED MOOPPAN
SRI.K.M.VARGHESE**

RESPONDENT'S:

- 1. BHASI K. NAIR,S/O.K.S.PILLAI,ASOK NILAYAM,
MANIKKATH CROSS ROAD,
PERUMANOOR,ERNAKULAM-682 015.**
- 2. JAYALAKSHMI.P,W/O.BHASI K. NAIR,
ASOK NILAYAM,MANIKKATH CROSS ROAD,
PERUMANOOR,ERNAKULAM-682 015.**
- 3. ROSY ANTONY,W/O.LATE ANTONY,
ELANJIMATTATHU HOUSE,NETTOOR P.O,
MARADU,ERNAKULAM,PIN-682 304.**
- 4. SHINU ANTONY,S/O.LATE ANTONY,
ELANJIMATTATHU HOUSE,NETTOOR P.O,
MARADU,ERNAKULAM,PIN-682 304.**
- 5. SHIBU ANTONY,S/O.LATE ANTONY,
ELANJIMATTATHU HOUSE,NETTOOR P.O,
MARADU,ERNAKULAM,PIN-682 304.**
- 6. RAYMOND ANTONY,S/O.LATE ANTONY,
ELANJIMATTATHU HOUSE,NETTOOR P.O,
MARADU,ERNAKULAM,PIN-682 304.**

**R3 TO R6 BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)
ADVS.SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 27-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

OP(C).No.115 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF OPC 2501/14 DATED 17.10.14.

EXHIBIT P2: TRUE COPY OF JUDGMENT DATED 28.11.14.

**EXHIBIT P3: TRUE COPY OF EA NO.12/2015 IN EP 397/10 ON THE FILE OF
MUNSIFFS COURT, ERNAKULAM.**

**EXHIBIT P4: TRUE COPY OF E.A.NO.13/2015 IN E.P NO.397/2010 ON THE FILE OF
MUNSIFF'S COURT,ERNAKULAM.**

EXHIBIT P5: NIL.

**EXHIBIT P6: TRUE COPY OF COMMISSION REPORT & SKETCH IN O.S.
NO.457/2003 DATED 4.8.2004.**

**EXHIBIT P7: TRUE COPY OF ANOTHER COMMISSION REPORT & SKETCH IN
O.S.NO.457/2003 DATED 8.9.2007.**

**EXHIBIT P8: TRUE COPY OF JUDGMENT IN O.S. NO.457/2003 DATED 25.1.2008
BEFORE THE 3RD ADDL.MUNSIFF'S COURT,ERNAKULAM.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

B.KEMAL PASHA, J.

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O.P.(C). No.115 of 2015

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Dated this the 27th day of May, 2015

J U D G M E N T

The decree in a suit for fixation of boundary is put in execution. The petitioner Municipality has stepped in with an obstruction to the execution stating that in case of putting up of a boundary through the boundary line, as ordered by the court below, it would pass through the middle of a Municipal road. Exhibit P4 commission application has also been filed along with Exhibit P3. The limited request is to have a direction to the court below to dispose of Exhibit P3 and P4 before proceeding further in the matter.

2. The defendant in the suit is the 2nd respondent herein. Even though the decree was obtained by the plaintiff, it seems that the plaintiff had not attempted to get it executed so far. As the decree is one for fixation of boundary, it is trite that it is a decree in common and the

defendant also can get it executed. See **Varghese v. Sivaraman [2011 (1) KLT 1005]** and **Damodara Panicker v. Ayyappankutty [1962 KLT 637]**.

3. The learned Senior Counsel for the 3rd respondent has pointed out that the boundary sought to be fixed is the boundary in between the property of the plaintiff and the property of the defendants and therefore, the Municipality has no say in the matter.

4. Per contra, the learned counsel for the petitioner has pointed out that the defendants are claiming a strip of land lying in between the property of the plaintiff and that of the Municipal road. According to the learned counsel for the petitioner, no such strip of land is available and the said portion is nothing but a Municipal road which is being used by the public at large.

5. The learned Senior Counsel has argued that Exhibit P3 E.A. preferred under Order 21 Rule 99 is not maintainable. This Court is not presently expressing any

opinion regarding the maintainability or otherwise of Exhibit P3.

6. The Municipality has not been made a party to the suit or to the execution. The apprehension put forward by the learned counsel for the petitioner that in case the decree is executed by permitting the parties to put up a boundary through any portion of the Municipal road, the Municipality would be put to irreparable loss and injury, seems to be correct.

7. According to the learned Senior Counsel, any portion of their property is not abutting the road. If in fact the boundary to be put up is one happens to be though any of the portions or even the side of the Municipal road, such a decree could not have been passed without bringing the Municipality as a party to the suit. Those questions are left open.

8. The court below shall dispose of Exhibit P4 as expeditiously as possible, at any rate within one month from

the date of receipt of a copy of this judgment. On getting a commissioner's report and plan on the basis of Exhibit P4, the court below shall dispose of Exhibit P3 within two months from the date of receipt of of the commissioner's report and plan.

This Original Petition (Civil) is allowed as above.

Sd/-

B.KEMAL PASHA
JUDGE