

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP(C).No. 1518 of 2013 (O)

**I.A. NO.696/2013 IN OS. NO.1055/2005 OF ADDL. MUNSIFF & RENT CONTROL
COURT, ERNAKULAM.**
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PETITIONER/DEFENDANT:

**JOSEPH K.X, AGED 53 YEARS,
S/O.XAVIER, KOCHUVEETIL HOUSE,
PERUMANOOR P.O., KOCHI - 15.**

**BY ADVS.SRI.GEORGE THOMAS (MEVADA)(SR.)
SRI.MANU GEORGE KURUVILLA
SMT.RINU JOSE**

RESPONDENTS/PLAINTIFFS:

- 1. K.P.MICHEAL, AGED 60 YEARS,
S/O.PETER KOCHUVEETIL, PERUMANOOR P.O., KOCHI- 15.**
- 2. PHILOMINA PETER, AGED 86 YEARS,
W/O.PETER KOCHUVEETIL, PERUMANOOR P.O., KOCHI- 15.**
- 3. ALBI, AGED 66 YEARS,
S/O.PETER KOCHUVEETIL, NEAR COIR BOARD, KALAVOOR P.O.,
PIN- 688 522.**
- 4. THRESIAMMA, AGED 64 YEARS,
D/O.PETER KOCHUVEETIL, PERUMANOOR P.O., KOCHI -15.**
- 5. THOMAS, AGED 62 YEARS,
S/O.PETER KOCHUVEETIL, THEVARA, KOCHI- 13**
- 6. RAJEENA, AGED 58 YEARS,
D/O.PETER KOCHUVEETIL, PERUMANOOR P.O., KOCHI- 15.**
- 7. FRANCIS, AGED 56 YEARS,
NEAR COIR BOARD, KALAVOOR P.O.,
ALLEPPEY, PIN- 688 522.**
- 8. HARSHA KUMAR, AGED 50 YEARS,
CONTRACTOR, S/O.SADASIVAN, KRISHNA KRIPA,
KADAVANTHRA, ELAMKULAM VILLAGE, COCHIN -682 020.**

**R1 TO R5, R7 & R8 BY ADVS. SRI.N.NEELAKANDHAN NAMBOODIRI,
SRI.P.S.NARAYANA RAJA.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: TRUE PHOTOCOPY OF THE WRITTEN STATEMENT
DATED 28/10/2005.
- EXT.P2: TRUE PHOTOCOPY OF THE I.A. 696 OF 2013 IN OS.1055/2005,
FILED BY THE PETITIONER DATED 31/01/2013.
- EXT.P3: TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT IN THE MATTER
FILED BY THE EIGHTH RESPONDENT ON 11/02/2013.
- EXT.P4: TRUE PHOTOCOPY OF THE ORDER I.A. 696/2013 IN O.S 1055/2005,
DATED 21/03/2013.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
O.P.(C) No.1518 of 2013
.....

Dated this the 21st day of July, 2015

J U D G M E N T

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The case of the petitioner is that a latrine and its septic tank were constructed by his father in the year 1979. It seems that the petitioner has no contention that he has perfected title over the said portion of the property on account of adverse possession and limitation. No such contention was resorted to by the petitioner in the written statement. It seems that the petitioner had sought for the appointment of an Advocate Commissioner with the assistance of an expert engineer to decide the age of the latrine, septic tank, etc. Only when there is a specific contention that his father happened to construct such a latrine and septic tank in any of the portions of the property of the plaintiff and that he has perfected title over that portion of the property of the plaintiff on account of adverse possession and limitation, the question of determination of the age of the latrine and septic tank etc. assumes importance.

2. Presently, the learned counsel for the petitioner submits that, that portion of the property wherein the septic tank and latrine are situated is the portion of his own property. In such case, he need not prove the age of the latrine and septic tank. Even without any proof of those things, if it is shown that those portions are his properties, he can definitely non-suit the plaintiff in the question of recovery of portion of that property.

3. On hearing learned counsel for the petitioner and learned counsel for the respondent, I do not think that there is any illegality, irregularity or jurisdictional error in Ext.P4 order passed by the court below. The suit is of the year 2005. Let the matter go for trial. The O.P.(Civil) is devoid of merit and is only to be dismissed, and I do so.

O.P.(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/21/07

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PA to Judge