

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

OP(C).No. 336 of 2015 (O)

(O.S.1491/1982 OF 2ND ADDITIONAL MUNSIF COURT,
THIRUVANANTHAPURAM)

PETITIONER:

YESUDASAN, AGED 65 YEARS
S/O.SATHYANESAN NADAR
R/A.KIZHAKKUMAKARA KUNNUMPURATH VEETIL
PULLIPRAKONATHU, KALLIYOOR P O, KALLIYOOR DESOM,
THIRUVANANTHAPURAM.

BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.
SRI.GOVIND PADMANAABHAN
SRI.AJIT G.ANJARLEKAR

RESPONDENTS:

1. PRASANNA KUMARI,
PUTHALATHU BUNGLOW, KOTTUKAL DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.
2. CHANDRIKA
PUTHALATHU BUNGLOW, KOTTUKAL DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.
3. USHA
PUTHALATHU BUNGLOW, KOTTUKAL DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.
4. JAYA
PUTHALATHU BUNGLOW, KOTTUKAL DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.
5. SADANANDAN
PUTHALATHU BUNGLOW, KOTTUKAL DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.

OP(C).No. 336 of 2015 (O)

6. LATHA
PUTHALATHU BUNGLOW, KOTTUKAL DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.

7. KRISHNA KUMAR @ SUNI
PUTHALATHU BUNGLOW, KOTTUKAL DESOM, KOTTUKAL VILLAGE,
THIRUVANANTHAPURAM.

R1-R7 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
R1-R7 BY ADV. SRI.JELSON J.EDAMPADAM

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- P1:- A TRUE COPY OF THE ORDER DTD 15/2/2012 IN E A NO 851 OF 2011 IN EP NO 330 OF 2011 IN OS NO.1491 OF 1982 PASSED BY THE II COURT OF THE II ADDITIONAL MUNSIF, THIRUVANANTHAPURAM.
- P2:- A TRUE COPY OF THE REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DTD 20/11/2014 BEFORE THE COURT OF THE II ADDITIONAL MUNSIF, THIRUVANANTHAPURAM.
- P3:- A TRUE COPY OF THE REPORT SUBMITTED BY THE EXPERT ENGINEER BEFORE THE COURT OF II ADDITIONAL MUNSIF, THIRUVANANTHAPURAM.
- P4: A TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER TO EXTS.P2 AND P3 REPORTS BEFORE THE II ADDITIONAL MUNSIF COURT, THIRUVANANTHAPURAM DTD 4/12/2014.
- P5:- A TRUE COPY OF THE OBJECTIONS FILED BY THE 2ND RESPONDENT TO EXT P4 OBJECTION BEFORE THE COURT OF THE II ADDITIONAL MUNSIF THIRUVANANTHAPURAM, DTD 4/12/2014.
- P6:- A TRUE COPY OF THE ORDER DTD 8/1/2015 IN EA NO 851 OF 2011 IN EP NO 330 OF 2011 (WRONGLY SHOWN AS 1982) IN OS NO 1491 OF 1982.

RESPONDENTS' EXHIBITS: NIL

// True copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.336 OF 2015

Dated this the 30th day of March, 2015.

J U D G M E N T

Under challenge is Ext.P6 order whereby the court below deferred consideration of certain aspects at the present stage. For the purpose of disposal of the original petition, the following facts are sufficient.

2. The decree holder got a decree and in the execution, it was contended that the judgment debtor is entitled to value the improvements. By Ext.P1 order, it was held that the 3rd judgment debtor is entitled to have a revaluation of improvements from 05.02.2011. An Advocate Commissioner was appointed so also an expert. Commissioner has filed his report and the expert has also filed a report.

3. The grievance now voiced is that the expert who was directed to value certain structures has selectively chosen certain items to value and omitted to value certain items for reason of his own. This, according to the 3rd judgment debtor, is not

permissible since an expert has no right to value items of his choice. The expert was directed to value structures made mention of in the Commissioner's report. That has not been done and that has caused considerable prejudice to the petitioner. It is under those circumstances a petition was filed which resulted in Ext.P6 order.

4. Learned counsel appearing for the respondents pointed out that subsequently, a decree has been passed by judgment dated 20.01.2015 and if the petitioner is aggrieved by any of the grounds on the basis of which the said order is passed, it is for him to challenge the final order as interim order no longer survives for consideration.

5. Learned counsel appearing for the petitioner points out that now that the petitioner has already filed a petition before this Court assailing the assessment made by the expert, he may be precluded from urging his grounds against the order dated 20.01.2015.

There is no justification for the above contention in the sense that the order dated 20.01.2015 is a comprehensive order

in which all the matters will be deemed to have been considered and if the petitioner before this Court is aggrieved by any of the findings in the order dated 20.01.2015 including the grounds taken by him, it is open for him to take appropriate steps against the order dated 20.01.2015. It is made clear that if he does so, the fact that the petitioner has filed the present petition will not stand in the way of the petitioner urging his grounds in the proceedings he may file as against the order dated 20.01.2015.

This original petition is disposed of as above.

Sd/-

**P.BHAVADASAN
JUDGE**

smp