

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

OP(C).No. 396 of 2015 (O)

PETITIONER(S):

**V.P.VASU AGED 72 YEARS
S/O. KESAVAN ACHARY, PENSIONER MELEDATH
VALIYAPURAYIL, KADAMBUR ASMOSM & DESOM, EDAKKAD P.O.
KANNUR DISTRICT, PIN-670 663.**

BY ADV. V.P.VASU(PARTY IN PERSON)

RESPONDENT(S):

- 1. KANDACHERI SAROJINI, AGED 52 YEARS
D/O. KANDACHERI NANI, PACHAPOYIL HOUSE
KADAMBUR AMSOM & DESOM, EDAKKAD PO, KANNUR DISTRICT
PIN-670663**
- 2. K.C. SUJAN,S/O LATE K.C, OMANA,, AGED 30 YEARS
PACHAPOYIL HOUSE, EDAKKAD PO, PIN-670663**
- 3. K.MOHANAN,, AGED 62 YEARS
KORAPRATH HOUSE, KADAMBUR AMSOM & DESOM, . EDAKKAD PO
PIN-670 663**
- 4. AMBALATHIL MADHAVI,, AGED 81 YEARS
KORAPRATH HOUSE, KADAMBUR AMSOM & DESOM, EDAKKAD PO
PIN-670 663**
- 5. P.UTHAMAN, PADMALAYAM, MANNAPURAM
CHERAKUNNU PO, KANNUR DISTRICT, PIN-670 301**
- 6. HAV. MOHANAN K,, AGED 60 YEARS
S/O. KUNJIRAMAN NAIR, PACHAPOYIL HOUSE
KADAMBUR AMSOM & DESOM, EDAKKAD PO, KANNUR DISTRICT
PIN-670 663**

**R2 BY ADV. SRI.V.RAMKUMAR NAMBIAR
R1,R3 BY ADV. SRI.P.U.SHAILAJAN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:A TRUE COPY OF THE DECREE DATED 13.2.2012 IN OS.NO.429/2011 OF THE MUNSIFF'S COURT, KANNUR.

EXT.P2: A TRYE COPY OF THE E.P.309/13 DATED 5.2.2013 OF THE MUNSIFF'S COURT THALASSERY

EXT.P3: A TRUE COPY OF THE ORDER DATED 16.12.2014 IN E.P.309/13 OF THE MUNSIFF'S COURT THALASSERY

EXT.P4: A TRUE COPY OF THE REPORT DATED 13.1.2015 IN EP.309/13 OF THE MUNSIFF'S COURT, THALASSERY

EXT.P5: A TRUE COPY OF THE ORDER DATED 17.1.2015 IN EP.309/13 OF THE MUNSIFF'S COURT THALASSERY

EXT.P6: A TRUE COPY OF THE E.A. 32/2015 DATED 21.1.2015 OF THE MUNSIFF'S COURT THALASSERY

EXT.P7: A TRUE COPY OF THE ORDER DATED 22.1.2015 IN EP.309/13 OF THE MUNSIFF'S COURT THALASSERY

EXT.P8: A TRUE COPY OF ORDER DATED 22.1.2015 IN EP.309/13 OF THE MUNSIFF'S COURT THALASSERY

EXT.P9: TRUE COPY OF THE JUDGMENT IN O.P.(C) 674/2014 DATED 6.3.2014 IN IA.NO.2152 OF 2015

EXT.P9-THE TRUE COPY OF THE PLAINT DATED 30.1.2014 IN OS.NO.65/2014 BEFORE THE MUNSIFF'S COURT, THALASSERY IN IA.NO.6914 OF 2015.

EXT.P10-THE TRUE COPY OF THE WRITTEN STATEMENT DATED 16.6.2014 SUBMITTED BY THE PETITIONER.

EXT.P11-THE TRUE COPY OF THE IA.NO.1825/2014 DATED 21.7.2014.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//True Copy//

PA to Judge

K. ABRAHAM MATHEW, J.

O.P.(C)NO.396 of 2015

Dated this the 26th day of October, 2015

J U D G M E N T

Petitioner is the decree holder in O.S.429 of 2011 which was for fixation of boundary and mandatory injunction. The decree has become final. He filed EP.309 of 2013 for execution of the decree. It appears that there was obstruction on the part of the judgment debtors. So the learned Munsiff directed execution of the decree with the assistance of police at the expense of the decree holder. He did not take any steps. So the EP was dismissed by Ext.P8 order. He had filed EA 32 of 2015 for some purpose which also happened to be dismissed. In this OP he challenges Ext.P5 order by which the police assistance was ordered and Ext.P8 order by which the EP was dismissed and Ext.P7 order by which EA 32 of 2015 was dismissed.

2. Heard.

3. The decree has become final. The petitioner is entitled to get it executed as it stands now. Instead of directing execution of the decree with the police assistance

The learned Munsiff should have directed the commissioner, who has already been appointed, to facilitate execution of the decree by the ameen. So I am inclined to set aside Exts.P5 and P8 orders.

4. When the boundary line was fixed by the trial court, no boundary mark was been put up. It is necessary to identify the boundary line again with the assistance of a surveyor in the presence of the commissioner. So the executing court shall appoint a surveyor also to assist the commissioner to identify the boundary line already fixed by the trial court. It is made clear that this is only to enable the petitioner to put up a boundary mark along the line. If he does not want to put up a boundary mark the property need not be identified again except for executing decree to the extent it grants mandatory injunction.

In the result, this O.P is allowed. Exts.P5 and P8 orders are set aside. The learned Munsiff is directed to appoint a surveyor to assist the commissioner to identify the boundary line marked in the plan attached to the decree. The petitioner shall be allowed to put up boundary mark along the boundary line so identified. The decree for

mandatory injunction shall be executed in the presence of the commissioner after the boundary lines are identified by the commissioner with the assistance of the surveyor after getting approval from the court. It is made clear that if there is already a boundary mark like or fence or wall the executing court shall not allow the petitioner to put up any other boundary mark.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge