

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

OP(C).No. 460 of 2015 (O)

PETITIONER :

1. PANACHAYIL INDUSTRIES, WEST OTHERA P.O.,
WEST OTHARA MURI, KOTTOOR VILLAGE,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT
REPRESENTED BY ITS PRESENT
MANAGING PARTNER ABY MATHEW, AGED 47 YEARS,
S/O.LATE P.A.MATHEW, PALLIAMBIL HOUSE,
WEST OTHERA P.O., WEWEST OTHARA MURI, KOTTOOR VILLAGE,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT .
2. BINU K. MATHEW, AGED 45, S/O.LATE P.A.MATHEW, PALLIAMBIL HOUSE,
WEST OTHARA P.O., WEST OTHARA MURI, KOTTOOR VILLAGE
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT .
3. ABY MATHEW, AGED 47, S/O.LATE P.A.MATHEW, PALLIAMBIL HOUSE,
WEST OTHARA P.O., WEST OTHARA MURI, KOTTOOR VILLAGE
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT .

**BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY**

RESPONDENTS :

1. SAMUEL C.THOMAS, AGED 58 YEARS,
S/O.SAMUEL, CHAMPADA PUNNAYIL HOUSE,
KURIYANNOOR MURI, THOTTAPPUZHASSERY VILLAGE,
KOLABHAGOM P.O., THIRUVALLA TALUK - 689 101.
2. RAJAMMA THOMAS, AGED 58 YEARS, W/O.SAMUEL,
CHAMPADA PUNNAYIL HOUSE, KURIYANNOOR MURI,
THOTTAPPUZHASSERY VILLAGE, KOLABHAGOM P.O.,
THIRUVALLA TALUK - 689 101.

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO.171/2008 DATED 16/08/2008 OF THE SUB COURT, THIRUVALLA.
- EXT.P2: TRUE COPY OF WRIT STATEMENT DATED 26/02/2009 IN O.S.NO.171/2008 DATED 16/08/2008 OF THE SUB COURT, THIRUVALLA.
- EXT.P3: TRUE COPY OF THE IA.NO.1382/2014 DATED 16/12/2014 IN O.S.NO.171/2008 DATED 16/08/2008 OF THE SUB COURT, THIRUVALLA.
- EXT.P4: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENTS IN AMENDMENT PETITION DATED 14/01/2015 IN O.S.NO.171/2008 DATED 16/08/2008 OF THE SUB COURT, THIRUVALLA.
- EXT.P5: TRUE COPY OF THE PLAINT IN OS.NO.196/2010 OF SUB COURT, THIRUVALLA DATED 18/07/2008
- EXT.P6: TRUE COPY OF THE WRITTEN STATEMENT FILED BY 1ST PETITIONER IN O.S.NO.196/2010 DATED 16/02/2009.
- EXT.P7: TRUE COPY OF ORDER IN IA.NO.1382/2014 IN OS.NO.171/2008 OF SUB COURT THIRUVALLA DATED 14/01/2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B.KEMAL PASHA, J.

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O.P.(C). No.460 of 2015

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Dated this the 4th day of June, 2015

J U D G M E N T

In respect of a property lying as a compact plot, allegedly with well defined boundaries, the petitioner has sought for a decree of perpetual prohibitory injunction through the suit. The extent of the property is shown as 14 Hectares, 93 Ares, 55 Sq. mtr. in the plaint. According to the petitioner, subsequently, it has come out that he could not produce some more title deeds with him and the actual extent of the property is 16 Hectares 12 Ares 32 Sq. mtr. Evidence was recorded in the suit, and in the course of the final hearing, the petitioner has filed I.A.No.1382 of 2014. The petitioner wanted to produce 34 more title deeds. Even though the change of the extent is sought for in the amendment application, the boundaries were not sought to be amended. According to the petitioner, the properties

were purchased from several persons for industrial purpose and the total extent of the property could not be shown at the time of the filing of the suit. However he could not produce some of the title deeds with him. The 1st defendant objected the I.A. on the ground that the proposed amendment would change the boundaries of the plaint schedule property. It seems that the court below without taking note of the fact that there were no proposed amendments for changing the boundaries of the property, has chosen to dismiss the application on the ground that it was belated.

2. On hearing the learned counsel for the petitioner, this Court is of the view that the court below has not considered the fact that the inclusion of a higher extent of property in the schedule without changing the boundaries would not cause any irreparable loss and injuries to the other parties. In case the amendment is not allowed, it seems that the petitioner would be put to irreparable loss and injuries. The said I.A. requires re-consideration and

Exhibit P7 order is liable to be set aside.

This Original Petition (Civil) is allowed and Exhibit P7 order stands set aside. The court below is directed to consider I.A.No.1382 of 2014 on merits and pass appropriate orders in accordance with the law, as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/4/6/15