

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

OP(C).No. 1962 of 2013 (O)

**I.A.NO.5327/2012 IN O.S.NO.1011/2011 OF ADDITIONAL MUNSIF COURT-I,
NEYYATTINKARA**

PETITIONER(S) :

- 1. NEELAMMEL,
D/O.KAMALAKSHI, CHANDANAKATTI KAILLASATHIL,
VATTAVILAKATHU, PARASSAL DESOM, PARASSALA VILLAGE,
THIRUVANANTHAPURAM.**
- 2. SIVANKUTTY,
S/O.CHELLAPPAN, CHANDANAKATTI KAILLASATHIL,
VATTAVILAKATHU, PARASSAL DESOM, PARASSALA VILLAGE,
THIRUVANANTHAPURAM.**

BY ADV. SRI.R.GOPAN

RESPONDENT(S) :

**SAROJAM,
D/O.KAMALAKSHI, EADAVILAKATHU VEEDU, VELLARADA DESOM,
KUNNATHUKAL VILLAGE- 695 001, THIRUVANANTHAPURAM.**

BY ADV. SRI.G.SUDHEER

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: PHOTOCOPY OF THE JUDGMENT DATED 30-09-1995 IN
O.S. NO.346/1993 OF THE SUB COURT, NEYYATTINKARA.
- EXT.P2: PHOTOCOPY OF THE DECREE DATED 30-09-1995 IN
O.S. NO.346/1993 OF THE SUB COURT, NEYYATTINKARA.
- EXT.P3: PHOTOCOPY OF THE SALE SANNATH EXECUTED BY THE LEARNED
SUB JUDGE, NEYYATTINKARA DATED 29-06-2000.
- EXT.P4: PHOTOCOPY OF THE REPORT FILED BY THE COURT AMIN IN
E.A NO. 150/2000 IN E.P. NO. 61/1996.
- EXT.P5: PHOTOCOPY OF THE TAX RECEIPTS ISSUED BY THE VILLAGE
OFFICER, KUNNATHUKAL VILLAGE.
- EXT.P6: PHOTOCOPY OF THE PLAINT IN O.S. NO. 1011/2011 OF THE MUNSIF
COURT, NEYYATTINKARA DATED 02-11-2011.
- EXT.P7: PHOTOCOPY OF THE COMMISSION REPORT DATED 26-11-2011 IN
O.S. NO.1011/2011 OF THE MUNSIF COURT, NEYYATTINKARA.
- EXT.P8: PHOTOCOPY OF THE WRITTEN STATEMENT FILED BY
THE 1ST DEFENDANT IN O.S. NO. 1011/2011 OF THE MUNSIF COURT
NEYYATTINKARA DATED 03-03-2012.
- EXT.P9: PHOTOCOPY OF THE I.A.NO. 5327/2012 IN O.S. NO.1011/2011 OF
THE MUNSIF COURT, NEYYATTINKARA DATED 06-10-2012.
- EXT.P10: PHOTOCOPY OF THE OBJECTION FILED BY THE PETITIONER IN
I.A. NO.5327/2012 IN O.S. NO.1011/2011 OF THE MUNSIF COURT,
NEYYATTINKARA DATED 02-01-2013.
- EXT.P11: PHOTOCOPY OF THE ORDER I.A.NO.5327/2012 IN O.S. NO.1011/2011
DATED 12-04-2012 OF THE COURT OF THE ADDL. MUNSIF-I,
NEYYATTINKARA.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

P.BHAVADASAN, J.

O.P.(C) No. 1962 of 2013

Dated this the 12th day of February, 2015

J U D G M E N T

Under challenge is Ext.P11 order whereby the court below has appointed a Commission to ascertain the value of the property which is in dispute.

2. The petitioner before this Court pointed out that he obtained a decree in respect of the suit property and obtained delivery also. Thereafter, the respondent is alleged to have trespassed into the property and started residence there. He therefore sought recovery of possession on the strength of title and other consequential reliefs. He applied for a Commission and the Commissioner has filed his report which is marked as Ext.P7. Later, the respondent filed Ext.P9 Commission application to ascertain the market value of the property and access of the property. That petition was allowed by the impugned order.

3. The learned counsel appearing for petitioner points out that the matters that was sought to be ascertained through Ext.P9 application is totally irrelevant to the issue on hand and has no bearing on the issue involved in the suit.

4. The learned counsel appearing for the respondent points out that the petitioner has shown the value of the property only as ₹ 1 lakh, but the property worth more than ₹ 30 lakhs. One has to remember that the suit is one for recovery of possession on the strength of title on the claim that the petitioner had obtained delivery of the property in the earlier proceedings in pursuance to the execution of a decree. At any rate, as of now, there is no question regarding the paucity or irregularity of the court fee paid in which case the ascertainment of the market value of the property is seen quiet unnecessary.

For the above reason, this petition is allowed and the impugned order is set aside and the matter is remanded to

the trial court and the trial court is directed to dispose of the matter, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this judgment.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge