

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP(C).No. 2089 of 2013 (O)

O.S.NO.148/2012 BEFORE THE ADDITIONAL MUNSIF'S COURT, KOTTAYAM

PETITIONERS:

1. GOPALAKRISHNAN, AGED 78 YEARS,
KUZHIKKADU HOUSE, KUZHIMATTOM KARA
PANACHICKADU VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT.
2. MANOHARAN, AGED 61 YEARS,
ELIKKUZHA HOUSE, KUZHIMATTOM KARA
PANACHICKADU VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT.
3. PRASAD KUMAR, AGED 36 YEARS,
ELIKUZHA HOUSE, KUZHIMATTOM KARA
PANACHICKADU VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT.
4. PRADEEP KUMAR, AGED 35 YEARS,
ELIKUZHA HOUSE, KUZHIMATTOM KARA
PANACHICKADU VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT.

BY ADVS. SRI.M.P.MADHAVANKUTTY
SRI.S.RANJIT (KOTTAYAM)

RESPONDENT:

RAJESH G.PILLAI, AGED 34 YEARS,
RAJESH BHAVAN, KUZHIMATTOM KARA
PANACHICKADU VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT
NOW RESIDING AT MURITHOLUNKAL HOUSE, PAMPADY KARA
PAMPADY VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT- 686 001.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS

- EXT.P1: TRUE COPY OF THE PLAINT IN O.S NO.148/2012 BEFORE THE ADDITIONAL MUNSIFF'S COURT, KOTTAYAM.
- EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.148/2012 BEFORE THE ADDITIONAL MUNSIFF'S COURT, KOTTAYAM.
- EXT.P3: TRUE COPY OF I.A.NO.2464/2012 IN O.S.NO.148/2012 BEFORE THE ADDITIONAL MUNSIFF'S COURT, KOTTAYAM.
- EXT.P4: TRUE COPY OF I.A.NO.2607/2012 IN O.S.NO.148/2012 BEFORE THE ADDITIONAL MUNSIFF'S COURT, KOTTAYAM.
- EXT.P5: TRUE COPY OF THE ORDER DATED 12/03/2013 IN I.A.NO.2464/2012 IN O.S.NO.148/2012 (ACTUALLY I.A 2607/2012 BEFORE THE ADDITIONAL MUNSIFF'S COURT, KOTTAYAM.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

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Dated this the 23rd day of March, 2015

JUDGMENT

The defendants in O.S.No.148 of 2012 on the file of the Court of the Additional Munsiff, Kottayam, challenge the order dated 12.3.2013 in I.A.No.2607 of 2012 (wrongly shown as I.A.No.2464 of 2012 in the order impugned).

2. The suit was filed by the respondent for prohibitory injunction as well as mandatory injunction. The prayer for mandatory injunction is to restore the property to the original position after removing certain structures allegedly constructed in the property in the possession of the plaintiff. The plaintiff filed I.A.No.2464 of 2012 to appoint a Commissioner to inspect the plaint schedule property and to measure out the same in accordance with title deeds. The defendants filed objections to I.A.No.2464 of 2012. The defendants also filed I.A.No.2607 of 2012 stating that in case I.A.No.2464 of 2012 were to be allowed, the points mentioned in I.A.No.2607 of 2012 also may be directed to be inspected by the Commissioner.

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The court below, by the order impugned allowed I.A.No.2464 of 2012, but dismissed I.A.No.2607 of 2012.

3. The learned counsel appearing for the respondent submitted that after the order impugned was passed, a Commissioner was appointed, who inspected the property on 14.5.2013 and filed a report dated 20.5.2013. The plaintiff filed an application to set aside the Commissioner's report, which was allowed as per the order dated 18.6.2013 and another Commissioner was appointed to inspect the property. On 18.6.2013, stay was granted in this Original Petition and it was being extended from time to time. In view of the stay, the Commissioner did not make any inspection.

4. Since the Commissioner's report is set aside and in view of the change of circumstances, I do not think, any prejudice would be caused to the plaintiff if I.A.No.2607 of 2012 is also allowed. By adopting such a course, the probable objections which the defendants may raise later could be avoided and a complete and effective adjudication can be had by the court below in respect of the

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disputes involved in the case. Accordingly, the order dated 12.3.2013 in I.A.No.2607 of 2012 is set aside and that application is allowed.

5. The learned counsel appearing for the parties submitted that the parties are close relatives and there is a 'sarppakkavu' in the disputed land. In the nature of the disputes involved and in view of the relationship between the parties, it would be ideal if the parties make an attempt to settle their disputes before the Mediation Centre before the Commissioner inspects the property. The mediation shall be conducted at the Mediation Centre, Kottayam. If the disputes are not settled in the mediation, the Commissioner shall inspect the property not only in respect of the matters mentioned in I.A.No.2464 of 2012 but also in respect of the matters mentioned in I.A.No.2607 of 2012 as well. The court below shall ensure that the mediation proceedings are over within two months.

The Original Petition is disposed of as above.

(K.T.SANKARAN)
Judge

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