

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

OP(C).No. 560 of 2015 (O)

I.A. NO.1032/2014 IN OS. NO.84/2013 OF MUNSIFF COURT, PALA.

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PETITIONER:

**USHA DEVI. M.B, VELIYATHU HOUSE,
KADAPPATTOOR KARA, MEENACHIL VILLAGE.**

BY ADV. SRI.P.C.HARIDAS.

RESPONDENT(S)/RESPONDENT:

- 1. STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR,
COLLECTORATE, KOTTAYAM-686 001.**
- 2. TAHSILDAR, MEENACHIL-686 573.**
- 3. TALUK SURVEYOR,
MEENACHIL TALUK OFFICE, PIN-686 573.**
- 4. VILLAGE OFFICER, MEENACHIL-686 573.**
- 5. KADAPPATTOOR DEVASWOM,
REPRESENTED BY DEVASWOM SECRETARY,
KADAPPATTOOR DEVASWOM OFFICE,
KADAPPATTOOR. P.O., PALA-686 574.**

R1 TO R4 BY GOVT. PLEADER SMT.LILLY LESLIE.

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 TRUE COPY OF THE PLAINT IN O.S.84/2013 ON THE FILES OF
THE MUNSIFF'S COURT, PALA.
- EXT.P2 TRUE COPY OF THE WRITTEN STATEMENT FILED BY
RESPONDENTS 1 TO 4 IN O.S.84/2013.
- EXT.P3 TRUE COPY WRITTEN STATEMENT FILED BY THE 5TH RESPONDENT
IN O.S.84/2013.
- EXT.P4 TRUE COPY OF I.A.1032/2014 IN O.S.84/2013.
- EXT.P5 TRUE COPY OF THE OBJECTION TO EXT.P4 FILED BY THE
5TH RESPONDENT.
- EXT.P6 TRUE COPY OF THE JUDGMENT IN RSA. 589/2008 OF THIS
HON'BLE COURT.
- EXT.P7 TRUE COPY OF THE ORDER DATED 05-11-2014 IN I.A.1032/2014 IN
O.S.84/2013 OF THE MUNSIFF'S COURT, PALA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

P.BHAVADASAN, J.

O.P.(C) No. 560 of 2015

Dated this the 03rd day of March, 2015

J U D G M E N T

The petitioner who instituted O.S.No. 84/2013 for a declaration of her right over the property and other consequential injunction, moved a petition for issuance of a Commission as per I.A.No. 1032/2014 in O.S.No. 84/2013 seeking the following matters to be ascertained by the Commissioner:

"തിട്ടപ്പെടുത്തേണ്ട സംഗതികൾ

1. മീനച്ചിൽ S.R.O. യിലെ 1991 ലെ 975, 1991 ലെ 976 എന്നീ ആധാര വസ്തുക്കൾ സർവ്വേ ചെയ്ത് പഴയ പ്ലാനിന്റെയും കൈവശത്തിന്റെയും അടിസ്ഥാനത്തിൽ പ്ലാൻ തയ്യാറാക്കി കോടതിയിൽ ഹാജരാക്കണം.
2. ഇപ്രകാരം പ്ലാൻ തയ്യാറാക്കുമ്പോൾ വടക്കും പടിഞ്ഞാറും 3, 3 1/2 യും അടി വീതിയിൽ സ്ഥലം നീക്കിയിട്ടതിനുശേഷം മാത്രം അളന്ന് പ്ലാൻ തയ്യാറാക്കണം.
3. ഇപ്പോൾ വാദിയുടെ കൈവശത്തിൽ ഇരിക്കുന്ന വസ്തു വിസ്തീർണ്ണം സഹിതം പ്ലാനിൽ പ്രത്യേകം കാണിക്കണം.

5. The learned counsel appearing for the petitioner points out that all that the petitioner wants to ascertain is that the width of 3 feet on the north and 3 ½ feet on the west has been left out for formation of a way and that needs to be ascertained by the Commissioner and he also sought

measurements of the property by virtue of two documents. There is no reason as to why the prayer should have been rejected.

6. The contention would have been good but for the judgment of this Court in R.S.A.No. 589/2008 dated 14.02.2011. Categorical finding of this Court is as follows:

“Argument of the learned counsel appearing for the appellant is that on the west and north of the property, there is a road and though Ext.A3 does not show that in between the road and the property assigned, land was left with the assignor, as there is a possibility of widening the road, such land was left behind with the assignor and the remaining property was assigned and therefore, plaint schedule property is to be fixed leaving the said area. As rightly found by the courts below, boundaries can be fixed only with reference to the description and boundaries seen in Ext.A3. Learned counsel appearing for the appellant prayed time to consult with the party, whether appellant is agreeable for fixing the boundaries as provided in Ext.A3. Learned counsel after consulting the party submitted that party is not willing to fix the boundaries as provided in

Ext.A3 and is contending that for fixation of the boundary 3 feet on the north and 3 ½ feet on the west is to be left out. When Ext.A3 does not show that any such land was left behind and instead shown that property which was transferred under Ext.A3 is the middle portion, the property cannot be fixed as contended by the appellant. In such circumstances, I find no substantial question of law involved in the appeal. Appeal is dismissed. No cost.

This Court therefore was of the opinion that the plea regarding 3 and 3 ½ feet on the north to the west cannot be countenanced in view of the above judgment. If that be so, the petitioner cannot re-agitate the very same issue in a different form.

The court below was justified in granting relief so far as that portion of the request is concerned. There is no merit in this original petition and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge