

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

OP(C).No. 589 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN OS 326/2007 of SUB COURT, PERUMBAVOOR

PETITIONER(S):

RUDRANIKUTTYAMMA, AGED 78 YEARS
D/O.BHAVANIYAMMA, PADUTHOLY HOUSE
RESIDING AT KULANGARAMADAM, PERUMBAVOOR KARA
PERUMBAVOOR VILLAGE.

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENT(S):

1. VISWAMBHARAN NAIR, AGED 74 YEARS
NEPHEW OF SANKARA NARAYANA PILLAI, PADUTHOLY HOUSE
RESIDING AT KULANGARAMADAM PERUMBAVOOR
KARAPERUMBAVOOR VILLAGE
PERUMBAVOOR - 683 542
2. SEETHA LAKSHMI
W/O.ANANTHAPADMANABHAN NAIR, PADUTHOLI HOUSE
RESIDING AT KULANGARAMADAM
PERUMBAVOOR KARAPERUMBAVOOR VILLAGE
PERUMBAVOOR - 683 542
3. RAJALAKSHMI
D/O.SEETHA LAKSHMI, PADUTHOLI HOUSE
RESIDING AT KULANGARAMADAM, PERUMBAVOOR KARA
PERUMBAVOOR VILLAGE, PERUMBAVOOR - 683542
4. ASHOKAN
H/O.RAJALAKSHMI, RESIDING AT ANAKHAPERUMBAVOOR
PERUMBAVOOR VILLAGE, PERUMBAVOOR - 683542
5. KRISHNA RAJ A.M
216/A, TULSI COMPLEX, B/H SABYOG
GORWAVADODARA - 16, GUJARAT
6. UDAYARAJ A.M
PALLAVI HOUSE
NEAR SEETHATHODU HIGH SCHOOL SEETHATHODU P.O.
PATHANAMTHITTA DISTRICT.

OPC.589/2015

7. SREERANJINI JAYACHANDRAN
SREERANJINI HOUSE, BROADWAY, PERUMBAVOOR - 683 542

8. BINDHU UNNIKRISHNAN
C/O.VISWAMBHARAN NAIR, KULANGARA MADOM
PERUMBAVOOR KARA, PERUMBAVOOR VILLAGE
PERUMBAVOOR - 683 542

R3,R4 & 6 BY ADV. SRI.G.RAJAGOPAL
R3,R4 & 6 BY ADV. SMT.N.RENJINEE DEVI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF GIFT DEED NO.961 DATED 17.3.59 OF PERUMBAVOOR SUB
REGISTRY OFFICE

EXT.P-2: TRUE COPY OF TAX RECEIPT NO.5512411 DATED 22.1.06 ISSUED TO THE
PETITIONER FROM PERUMBAVOOR VILLAGE OFFICE

EXT.P-3: TRUE COPY OF AMENDED PLAINT IN O.S.326/07 OF SUB COURT,
PERUMBAVOOR

EXT.P-4: TRUE COPY OF WRITTEN STATEMENT FILED BY 1ST DEFENDANT IN
O.S.326/07 ON 5.7.12

EXT.P-5: TRUE COPY OF WRITTEN STATEMENT FILED BY 3RD DEFENDANT IN
O.S.326/07 DATED 5.7.12

EXT.P-6: TRUE COPY OF THE SURVEY PLAN SUBMITTED BY COMMISSIONER
ADVOCATE IN O.S.326/07 DATED 27.2.14.

EXT.P-7: TRUE COPY OF REPORT SUBMITTED BY SURVEYOR ALONG WITH EXHIBIT
P6 ON 27.2.14.

EXT.P-8: TRUE COPY OF I.A. 947/14 DATED 16.8.14 FILED BY THE PETITIONER ON
O.S. 326/07

EXT.P-9: TRUE COPY OF ORDER IN I.A. 947/14 IN O.S.326/07 DATED 20.8.14

RESPONDENT(S)' EXHIBITS : NIL

// True Copy //

PA to Judge

B. KEMAL PASHA, J.

.....
O.P.(C) No.589 of 2015
.....

Dated this the 17th day of August, 2015

J U D G M E N T

~ ~ ~ ~ ~

Petitioner has filed an application before the court below seeking permission to withdraw from the suit with liberty to file a fresh suit on the same subject matter. The suit is one for fixation of boundary and for the declaration of a prescriptive right on a pathway. A Commissioner with the assistance of a Surveyor was appointed. The Commissioner has taken years and years, which has resulted in the delay of the suit. The suit is of the year 2006.

2. As the Commissioner's report and plan cannot be acted upon for the purpose of fixation of the boundary and is of no use, the petitioner has applied before the court below seeking permission to withdraw from the suit with liberty to file a fresh suit. The said application was dismissed by the court below through Ext.P9 order mainly on the ground that

the application is belated. Further, according to the court below, there is no formal defect in the suit.

3. Even in Ext.P9 order, the court below has endorsed the view that the disposal of the suit was delayed solely for the reason that the commission application was pending throughout the period, and that the Commissioner had not filed the report. Belatedly, a report has been filed and the same is of no use at all. Through Ext.P7 report, the Surveyor has reported before the court below that the property could not be measured out on the basis of the original plan as the plan produced by the parties did not contain some measurements and that ladder measurements were also not available. According to the Surveyor, the measurement was carried out in a manner which, according to him, was fair.

4. On going through the Commissioner's report and plan, it seems that the plan prepared by the Surveyor cannot be relied on for fixation of boundary. On going through the

matter, it seems that there are sufficient grounds for permitting the plaintiff to withdraw from the suit with liberty to file a fresh suit on the same subject matter.

In the result, this O.P.(Civil) is allowed and Ext.P9 order is set aside. Ext.P8 IA is allowed. The petitioner is permitted to withdraw from the suit with liberty to file a fresh suit on the same subject matter.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/17/08

// True Copy //

PA to Judge