

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

OP(C).No. 615 of 2015 (O)

C.M.A.NO.5/2013 OF SUB COURT, THIRUVALLA

I.A.NO.839 OF 2013 IN O.S.NO.261/2013 OF MUNSIFF COURT, THIRUVALLA

PETITIONER(S)/APPELLANT-PETITIONER-PLAINTIFF :

**THOMAS CHACKO, S/O.CHACKO,
KILLIYELATHU HOUSE, PALLIKKARA MURI,
THIRUVALLA VILLAGE.**

**BY ADVS.SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN**

RESPONDENT(S) :

- 1. SANTHOSH, PEROORKIZHAKKETHIL,
PALIAKARA MURI, THIRUVALLA VILLAGE.**
- 2. THRESIAMMA CHACKO, KARIPPANTHARA VEEDU,
PALIAKARA MURI, THIRUVALLA VILLAGE.**
- 3. BENNY DEVASIA, KARIPPANTHARA VEEDU,
PALIAKARA MURI, THIRUVALLA VILLAGE.**
- 4. DASAPPAN P.K., PEROOR KIZHAKKETHIL,
PALIAKARA MURI, THIRUVALLA VILLAGE.**

R2 & R3 BY ADV. SRI.V.ANIL (K/1480/98)

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- * EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO.261 OF 2013 OF THE MUNSIFF COURT, THIRUVALLA (SUBSTITUTED).
- * EXT.P1 SUBSTITUTED WITH THE TRUE COPY OF THE PALINT IN O.S.NO.261/2013 OF THE MUNSIFF'S COURT, THIRUVALLA AS PER ORDER DATED 06.03.2015 IN I.A.NO.3462 OF 2015.
- EXT.P2: TRUE COPY OF THE ORDER NO.D5-376/12 DATED 28-01-2013 OF THE EXECUTIVE ENGINEER, MINOR IRRIGATION DIVISION, PATHANAMTHITTA.
- EXT.P3: TRUE COPY OF THE INJUNCTION APPLICATION-I.A.839 OF 2013 IN O.S.NO.261 OF 2013 OF THE MUNSIFF COURT, THIRUVALLA.
- EXT.P4: TRUE COPY OF THE ORDER DATED 03-12-2013 IN I.A.839 OF 2013 IN O.S.NO.261 OF THE MUNSIFF COURT, THIRUVALLA.
- EXT.P5: TRUE COPY OF THE JUDGMENT DATED 30-09-2015 IN C.M.A.NO.5 OF 2013 OF THE MUNSIFF COURT, THIRUVALLA.
- EXT.P6: TRUE COPY OF THE SKETCH PREPARED BY THE TALUK SURVEYOR IDENTIFYING THE PETITIONER'S PROPERTY.
- EXT.P7: TRUE COPY OF THE FRESH PLAN PREPARED BY THE TALUK SURVEYOR IDENTIFYING THE PETITIONER'S PROPERTY.
- EXT.P8: TRUE COPY OF THE COMPLAINT FILED BY THE DEFENDANTS AND OTHERS TO THE TAHSILDAR.
- EXT.P9: TRUE COPY OF THE FRESH PLAN PREPARED BY THE TALUK SURVEYOR IDENTIFYING THE PETITIONER'S PROPERTY.
- EXT.P10: TRUE COPY OF THE REPORT OF THE TALUK SURVEYOR ANNEXED TO EXT.P9 SKETCH.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(C) No. 615 of 2015
.....

Dated this the 15th day of July, 2015

J U D G M E N T

Even though notice has been served on the respondents, there is no representation for the respondents. Heard the learned counsel for the petitioner.

2. It seems that the plaintiff has sought for an order of temporary injunction through Ext.P3 thereby restraining the defendants or other persons coming under them from committing trespass into the plaint schedule property and from obstructing the construction of retaining wall for which permission was obtained by the petitioner through Ext.P2 from the Minor Irrigation Executive Engineer, Pathanamthitta. The trial court, through Ext.P4 order has

dismissed Ext.P3 IA mainly on the ground that there is no evidence before the court below to see that the revenue land and the plaint property were demarcated properly before starting the construction activities. In a sense, the said view taken by the trial court denotes that the plaintiff had not obtained the plan in respect of the property thereby showing its boundaries, especially the boundary demarcating the property of the petitioner and the *puramboke* land.

3. Aggrieved by Ext.P4 order, the petitioner preferred C.M.A.No. 5 of 2013 before the Subordinate Judge's Court, Thiruvalla. The learned Subordinate Judge also dismissed the CMA through Ext.P5 judgment mainly based on the observations made by the court below in paragraphs 10 and 11. The appellate court has observed that no steps were taken by the petitioner even at that stage to get a Commissioner appointed, to locate the property or to measure the property with the help of a Surveyor.

Further, it was held that resurvey plan showing the boundaries of the plaint schedule property and the northern *thodu* was also not produced. In paragraph 11, it was held that in case of granting an injunction as prayed for, it would enable the plaintiff to properly put up boundary and there is chance to encroach upon the Government land. It was on that ground the CMA was dismissed.

4. The learned counsel for the petitioner has pointed out that the petitioner has initially procured Ext.P6 plan from the Taluk Surveyor, Thiruvalla. As the survey number was mistakenly shown, again he applied for obtaining a correct plan and he has obtained Ext.P7 plan. Ext.P7 plan shows that it was issued to the petitioner for producing it before the Minor Irrigation Office.

5. It seems that though Ext.P2 permission has been granted by the Executive Engineer, Minor Irrigation Division, Pathanamthitta for the construction of the retaining wall to the property of the petitioner at the northern boundary for a

length of 30 metres. Specific conditions also have been incorporated in Ext.P2. Altogether six conditions have been incorporated.

6. After all these exercises, the defendants have approached the Tahsildar, Thiruvalla through Ext.P8 application complaining that the petitioner is going to encroach upon the *puramboke* land. Once again the revenue authorities have carried out a fresh survey for revising the sketch as per Ext.P9 plan, the copy of which has been obtained by the petitioner through Right to Information Act. Exts.P7 and Ext.P9 have got the very same measurements. The Taluk Surveyor has furnished Ext.P10 report also stating that the property was surveyed on the basis of resurvey records and boundaries were re-fixed and the measurements were made known to the officers attached to the Minor Irrigation Department and the Municipality.

7. It has come out that the petitioner is entitled to

carry out construction, for which permission has been granted to him through Ext.P2, subject to the conditions specified in Ext.P2. The trial court had complained that the petitioner had not produced the plan. Presently Exts.P7 and P9 plans are available for the said purpose. It seems that the appellate court has found fault with the petitioner in not getting the property identified through the appointment of a Commissioner. In such case, it is open to the petitioner to file an application for the issue of a Commission for locating the property on the basis of Exts.P7 and P8 plans, and to get the property and its northern boundary identified. The petitioner shall be permitted to carry out the construction of the retaining wall for which permission has been granted to him through Ext.P2. As per condition No.4 of Ext.P2, the construction should be supervised by the Assistant Engineer MI Section, Thiruvalla and the Assistant Executive Engineer, MI Sub Division, Thiruvalla. In such case, the defendants and all others claiming under them shall not obstruct the

construction of the retaining wall at the northern boundary as demarcated by the Commissioner and Surveyor with the aid of Exts.P6 and P9.

The Original Petition is disposed of as above.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge