

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

OP(C).No. 2467 of 2013 (O)

(E.A.NO.139/2009 IN EP.NO. 25/2000 IN OS.NO.188/1997 OF MUNSIF
COURT, ATTINGAL)

PETITIONER/JUDGMENT DEBTOR :

MOHANAN, AGED 53 YEARS,S/O.SADANANDAN,
RESIDING AT PUTHUVAL PUTHEN VEEDU,
PALLITHAVEETTU MURI, PALLIPPURAM VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/DECREE HOLDER :

1. LEKSHMANAN,S/O.KRISHNAN,
KARTHIKA, PUTHUVAL PUTHEN VEEDU,
PALLITHAVEETTU MURI, PALLIPPURAM VILLAGE,
THIRUVANANTHAPURAM-695 316.

2. SAROJINI, W/O.LEKSHMANAN,
KARTHIKA, PUTHUVAL PUTHEN VEEDU,
PALLITHAVEETTU MURI, PALLIPPURAM VILLAGE,
THIRUVANANTHAPURAM-695 316.

R1 & R2 BY ADVS. SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.SURAJ.S
SRI.ANESH PAUL
SRI.ANEESH JAMES

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 2467 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE PETITION FILED BY THE PETITIONER UNDER SECTION 47 OF THE CIVIL PROCEDURE CODE FOR RE-DELIVERY WHICH IS NUMBERED AS E.A.NO.139/2009 IN E.P.NO.25/2000 IN O.S.NO.188/1997
- EXT.P2 - TRUE COPY OF THE JUDGMENT IN WPC.NO.24571/2010 BEFORE THIS HONOURABLE COURT DATED 09-11-2012.
- EXT.P3 - TRUE COPY OF THE COMMISSION REPORT DATED 28-1-2013 ALONG WITH THE REPORT OF THE VILLAGE OFFICER
- EXT.P4 - TRUE COPY OF THE AMENDMENT PETITION FILED BY THE PETITIONER WHICH IS NUMBERED AS E.A.NO.9/2013 IN E.A.NO.139/2009 IN IN E.P.NO.25/2000 DATED 19-2-2013
- EXT.P5 - TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT DATED FEBRUARY 2013.
- EXT.P6 - TRUE COPY OF THE ORDER DATED 2-7-2013 IN E.A.NO.9 OF 2013 IN EP. NO.25/2000 IN O.S.NO.188/1997.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

B.KEMAL PASHA, J.

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O.P.(C).No.2467 of 2013

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Dated this the 25th day of June, 2015

J U D G M E N T

Exhibit P6 order in E.A.No.9 of 2013 in E.P.No.25 of 2000 in O.S.No.188 of 1997 of the Munsiff's Court, Attingal is under challenge. The said E.A. is one seeking redelivery of the property under Section 47 C.P.C. Alleging that a different property belongs to the petitioner was delivered in execution of the decree as against the property scheduled in the decree, the application for redelivery has been filed for getting it adjudicated under Section 47 C.P.C. A commission was taken out. The petitioner had challenged the Commissioner's report. As such an opportunity was

turned down, C.R.P. No.847 of 2007 was filed by the very same petitioner before this Court. The said C.R.P. was disposed of by giving an opportunity to the petitioner to challenge the said Commissioner's report by filing objection as well as documents. It seems that later the petitioner filed another application for the issue of a Commission. The said application was allowed and a Commissioner was appointed.

2. In the meantime, the decree holder filed a counter to E.A.No.9 of 2013 in E.A.No.139 of 2009 by challenging its maintainability. The question of maintainability was heard and E.A.No.139 of 2009 was dismissed as not maintainable. The said order was challenged before this Court through W.P.(C) No.24571 of 2010. The same was allowed through Exhibit P2 judgment. The impugned order was set aside on the ground that the court below ought to have waited for the Commissioner's report for considering the said question of maintainability. Thereafter, the matter was again under

consideration. In the meantime, Exhibit P3 Commissioner's report appended with the plan has come. Thereafter, Exhibit P4 E.A.No.9 of 2013 was filed in E.A.No.139 of 2009 seeking a series of amendments allegedly on the basis of the Commissioner's report and plan.

3. Exhibit P4 was stoutly opposed by the decree holder through Exhibit P5 objection. It was contended that the judgment debtor in O.S.No.188 of 1997, who is the petitioner herein had filed O.S.No.408 of 2002 before the court below for declaration of title and possession of the scheduled property in O.S.No.188 of 1997. After taking evidence, the court below dismissed O.S.No.408 of 2002 with costs. Challenging the dismissal of the said suit, the petitioner had preferred A.S.No.117 of 2003 before the Subordinate Court, Attingal and the said appeal was also dismissed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. It seems that a series of amendments have been sought for by way of introducing certain new facts allegedly based on the Commissioner's report. The present E.A.No.139 of 2009 is one seeking redelivery. It cannot be imagined that the petitioner was not aware of the identity of his property over which he claimed redelivery. The court below has rightly dismissed the said E.A. through Exhibit P6 order. Exhibit P6 order does not suffer from any illegality, irregularity or jurisdictional error and the same is not liable to be interfered with.

In the result, this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE