

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

OP(C).No. 970 of 2015 (O)

CMA 35/2013 OF ADDITIONAL DISTRICT COURT - IV, PALAKKAD DATED 30-09-2014
.....

PETITIONER(S):

VEERAPPAN, AGED 73 YEARS,
S/O.MAYANDI, MACHATHU HOUSE, NELLICHODU
POTHUNDI VILLAGE, CHITTUR TALUK, PALAKKAD DISTRICT

BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF
SRI.T.U.SUJITH KUMAR
SMT.ANU JACOB

RESPONDENT(S):

GANGADHARAN, AGED 61 YEARS,
S/O. PAPPY, MATTANAYIL, NELLICHODU,
POTHUNDI VILLAGE, CHITTUR TALUK, PALAKKAD DISTRICT.

R1 BY ADV. SRI.A.K.MADHAVAN UNNI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 02-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

OP(C).No. 970 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1-A TRUE COPY INTERLOCUTORY APPLICATION NUMBER 2460/2012
ORIGINAL SUIT NUMBER 506/2007 OF THE COURT OF THE MUNSIF OF
CHITTUR.**

**EXHIBIT P2 A TRUE COPY OF OUTPATIENT TICKET DATED SEPTEMBER 3,2012
ISSUED FROM THE COMMUNITY HEALTH CENTRE NENMARA.**

**EXHIBIT P3 A TRUE COPY OF ORDER DATED JUNE 19,2013 IN INTERLOCUTORY
APPLICATION NUMBER 2461 OF 2012 IN ORIGINAL SUIT NUMBER 66 OF
2005 OF THE COURT OF THE MUNSIF OF CHITTUR.**

**EXHIBIT P4 A TRUE COPY OF ORDER DATED JUNE 19,2013 IN INTERLOCUTORY
APPLICATION NUMBER 2460/2012 IN ORIGINAL SUIT NUMBER 506/2007
OF THE COURT OF THE MUNSIF OF CHITTUR**

**EXHIBIT P5 A TRUE COPY OF THE ORDER DATED SEPTEMBER 30,2014 IN CIVIL
MISCELLANEOUS APPEAL NUMBER 36/2013 THE COURT OF THE
ADDITIONAL DISTRICT JUDGE NO V. PALAKKAD WPC.**

**EXHIBIT P6: A TRUE COPY OF ORDER DTD.SEPTEMBER 30,2014 IN CIVIL
MISCELLANEOUS APPEAL NUMBER 35/2013 OF THE COURT OF THE
ADDITIONAL DISTRICT JUDGE NUMBER IV, PALAKKAD.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
O.P.(C) No.970 of 2015
.....

Dated this the 2nd day of July, 2015

J U D G M E N T

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O.S.No.66/2005 was filed by the petitioner herein against the respondent for a decree of perpetual injunction against trespass, waste, etc. The respondent herein filed O.S.No.506/2007 against the petitioner before the court below for fixation of boundary and for permission to cut and remove the trees standing on the boundaries. It seems that in both the suits, practically the dispute is with regard to the boundary separating the property of the petitioner and that of the respondent. Even though joint trial was not ordered, both the suits were simultaneously posted. Both the suits were included in the list of the same date. When the suits came up in the list, the petitioner could not be present before the court as he had gone to the hospital in connection with his illness. O.S.No.66/2005 was dismissed

and O.S.No.506/2007 was decreed *ex-parte*. IA was filed under Order IX Rule 9 for getting O.S.No.66/2005 restored. Along with it, IA.No.2460/2012 was filed by the petitioner herein before the court below under Order IX Rule 13 for getting the *ex-parte* decree in O.S.No.506/2007 set aside. The court below dismissed both the IAs. Two CMAs were preferred as CMA Nos.35/2013 and 36/2013. It seems that the said two CMAs were made over to different courts. CMA No.36/2013 in respect of O.S.No.66/2005 was allowed and consequently, the suit was restored. The other court, which was dealing with CMA No.35/2013, has dismissed the CMA through Ext.P6 order. In Ext.P5, it is specifically stated that the petitioner had produced medical records to show the reason for his absence before the court below. At the same time, the said certificate could not be produced in CMA No.35/2013. It seems that CMA No.35/2013 was dismissed mainly on the ground that no medical records were produced to justify the absence of the petitioner in

O.S.No.506/2007.

2. Ext.P6 order is under challenge.

3. Heard learned counsel for the petitioner and learned counsel for the respondent.

4. Even though the learned counsel for the respondent has pointed out that the suit relates to different properties, it seems that the crux of the matter involved in both the suits is a dispute with regard to the boundary separating the property of the petitioner as well as the property of the respondent. It is evident that both the suits were being posted in the list simultaneously. Both the suits came up in the list together. Practically now, one suit stands dismissed and the other suit stands decreed, which clearly creates an anomaly. When one of the courts has justified the absence of the petitioner in O.S.No.66/2005, on the same day, the other court, while dealing with CMA No.35/2013 relating to O.S.No.506/2007, has taken the view that the petitioner could not justify his absence when the suit

came up in the list. Both the judgments cannot go together. Necessarily, Ext.P6 order is liable to be set aside, especially when CMA No.36/2013 was allowed.

5. In the result, this O.P.(Civil) is allowed. Ext.P6 order stands set aside. CMA No.35/2013 stands allowed in tune with Ext.P5 judgment. IA.No.2460/2012 in O.S.No.506/2007 is allowed and the *ex-parte* decree in O.S.No.506/2007 stands set aside. The court below shall try both the suits simultaneously.

The learned counsel for the petitioner has pointed out that O.S.No.66/2005 stands posted to 04.07.2015. The court below shall adjourn the suit and include the suit in the list of next month so that the court below can include O.S.No.506/2007 also in the list on the same day.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/02/07

// True Copy //

PA to Judge