

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

OP(C).No. 2787 of 2013 (O)

OS. NO.55/2008 OF MUNSIFF COURT, KANJIRAPPALLY.

.....

PETITIONER(S):

ANTONY, AGED 61 YEARS,
S/O.ABRAHAM, VADAYIL, VADAKKUM BHAGOM KARA,
CHIRAKKADAVU VILLAGE, KANJIRAPPALLY.

BY ADV. SRI.PEARSON S.FERNANDEZ.

RESPONDENT(S):

1. MARIAMMA,
W/O.MATHEW JOSEPH, PODIMATTATHIL HOUSE,
VADAKKUM BHAGOM MURI, CHIRAKKADAVU VILLAGE,
KANJIRAPPALLY.

2. MATHEW JOSEPH,
HUSBAND OF MARIAMMA, PODIMATTATHIL HOUSE,
VADAKKUM BHAGOM MURI, CHIRAKKADAVU VILLAGE,
KANJIRAPPALLY.

* ADDL. R3 TO R7 IMPEADED

3. SAJI JOSEPH, AGE NOT KNOWN,
S/O.LATE MATHEW JOSEPH, PODIMATTATHIL,
PONKUNNAM P.O., KOTTAYAM DISTRICT-686 506.

4. THOMASKUTTY JOSEPH, AGE NOT KNOWN,
S/O.LATE MATHEW JOSEPH, PODIMATTATHIL,
PONKUNNAM P.O., KOTTAYAM DISTRICT-686 506.

5. SALY, AGE NOT KNOWN,
S/O.LATE MATHEW JOSEPH, PODIMATTATHIL,
PONKUNNAM P.O., KOTTAYAM DISTRICT-686 506.

6. SALU JOSEPH, AGE NOT KNOWN,
S/O.LATE MATHEW JOSEPH, PODIMATTATHIL,
PONKUNNAM P.O., KOTTAYAM DISTRICT-686 506.

OP(C).No. 2787 of 2013 (O)

**7. SANCHO JOSEPH, AGE NOT KNOWN,
S/O.LATE MATHEW JOSEPH, PODIMATTATHIL,
PONKUNNAM P.O., KOTTAYAM DISTRICT-686 506.**

*** ADDL. R3 TO R7 ARE IMPEADED AS PER ORDER DATED 24/07/2015
IN I.A. NO.10156/2014.**

**** ADDRESS OF ADDL. RESPONDENTS 6 & 7 ARE CORRECTED AS:**

**6. ANTONY JOSEPH @ SALU JOSEPH,
AGE NOT KNOWN, S/O.LATE MATHEW JOSEPH,
PODIMATTATHIL, C/O.HILDA BAKERY,
PONKUNNAM P.O., KOTTAYAM DISTRICT, PIN-686 506.**

**7. JOSE JOSEPH @ SANJU JOSEPH,
AGE NOT KNOWN, S/O.LATE MATHEW JOSEPH,
PODIMATTATHIL, C/O.HILDA BAKERY,
PONKUNNAM P.O., KOTTAYAM DISTRICT, PIN-686 506.**

**** AS PER ORDER DATED 01/04/2015 IN I.A. NO.4572/2015.**

**R1 BY ADVS. SRI.S.ANANTHAKRISHNAN,
SRI.N.K.SUBRAMANIAN.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- TRUE COPY OF THE OS NO.55/2008 FILED BY THE RESPONDENTS, BEFORE THE HON'BLE MUNSIFF COURT, KANJIRAPPALLY.
- P2- TRUE COPY OF THE WRITTEN STATEMENT ALONG WITH THE COUNTER CLAIM FILED BY THE PETITIONER IN I.A.NO.1105/2010 IN OS NO.55/2008 BEFORE THE HON'BLE MUNSIFF COURT, KANJIRAPPALLY.
- P3- TRUE COPY OF THE SURVEY PLAN ISSUED BY THE VILLAGE OFFICER, CHIRAKADAVU.
- P4- TRUE COPY OF THE COMMISSION REPORT AND SKETCH FILED IN OS NO.55/2008 BEFORE THE HON'BLE MUNSIFF COURT, KANJIRAPPALLY.
- P5- TRUE COPY OF THE I.A.NO.1512/2011 FILED BY THE PETITIONER IN OS NO.55/2008 BEFORE THE HON'BLE MUNSIFF COURT, KANJIRAPPALLY.
- P6- TRUE COPY OF THE DISMISSAL ORDER DATED 26.03.2013, PASSED BY THE HON'BLE MUNSIFF COURT, KANJIRAPPALLY, IN I.A.NO.1512/2011 IN OS NO.55/2008.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

B.KEMAL PASHA, J.

=====

O.P.(C).No.2787 of 2013

=====

Dated this the 24th day of July, 2015

J U D G M E N T

What is under challenge is Exhibit P6 order by which the court below has dismissed I.A.No.1512 of 2011 filed by the petitioner, who is the defendant in the suit for remitting the Commissioner's report and plan.

2. The suit is one for injunction. The petitioner, who is the defendant filed a written statement contending that a portion of his property was encroached upon by the plaintiff. Through counter claim, the petitioner has sought for recovery of possession of that portion of the property. A

commission was taken out with the assistance of a Surveyor. The petitioner has produced the re-survey plan, on the basis of which he wanted to get the survey carryout.

3. According to the Commissioner, the survey was carried out in terms of the re-survey plan. Surveyor, who prepared that plan was also examined before the court below at the instance of the petitioner. It seems that the Surveyor has deposed that the survey was carried out in strict compliance with the re-survey plan. The said re-survey plan is also produced. On going through the matter, at present, it cannot be said that, either the Commissioner's report or plan is defective on any respect. Matters being so, presently there is nothing to interfere with Exhibit P6.

4. It seems that the suit is ripe for trial. Let evidence be adduced by both sides in the suit. In the course of the evidence, if the court below feels that the plan has to be corrected in any manner, again the court below shall give an opportunity to the petitioner to apply for getting the Commissioner's report remitted on any such specific

grounds, if any, and in such case, the Commissioner should be assisted by another Surveyor or Taluk Surveyor.

With the said observations, this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/24/7/15