

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

OP(C).No. 1007 of 2015 (O)

(E.A.NO.407/2014,E.A.NO.414/2014 IN E.A.NO.408/2014 IN E.P.NO.7/2008 IN
O.S.NO.1/1964 OF 1ST ADDITIONAL DISTRICT COURT, PALAKKAD.

PETITIONER :

N. MOHAN VARMA, AGED 58 YEARS,
S/O.LATE VENUGOPALA VARMA RAJA VALIYANAMBIDI,
THE PALACE (VENGUNNADU KOVILAKAM),
NOW RESIDING AT KOLLENGODE, KOZHISSERY HOUSE,
PAYYALORE, KOLLENGODE, CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.H.BADARUDDIN
SMT.B.SHAMEERA

RESPONDENT(S):

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1. M/S. K.J. PLANTATIONS,
REPRESENTED BY ITS MANAGING PARTNER,
K.SURESH, KILLIKALLOOR, QUILON-4.
 2. M/S.SOUTH COAST SPICES EXPORT (P) LTD.,
13/600 KOCHANGADI, COCHIN, REPRESENTED BY MANAGING
PARTNER ALPA R.PALLICHA, AGED 47 YEARS, W/O.RAJESH KUMAR,
37/1036, SREENIVAS, KANATTUKARA TRISSUR-680 594
 3. ASGAR, S/O.MOHAMMED HANEEFA, FARM HOUSE,
PARASUVAIKAL, NEYYATTINKARA-695 603.
 4. MEERA SAHIB,S/O.MOHAMMED KANNU,
THUNDUVILAKATHU, T.B.JN, NEYYATTINKARA-695 603.
 5. BIYATHIKANNU, D/O.POODIPILLAI, HAZAR MANZIL,
AMARAVILA, CHENGAI VILLAGE, NEYYATTINKARA-695 603
 6. SHAJAHAN,S/O.JAMALUDEEN, PULIMOOTTIL HOUSE,
T.B.JN, NEYYATTINKARA-695 603
 7. P.BEEPATHIMA,D/O.MOHAMMED KANNU HAJIYAR,
KALPADI HOUSE, THANGAPATTAM, PAINKULAM VILLAGE,
VILLAVINKODE TALUK, KANYAKUMARI DISTRICT-695 584.

OP(C).NO.1007/2015

8. VIJAYAN NAIR, S/O.SUKUMARAN NAIR,
KRISHNA VILASAM, CHENGAL VILLAGE,
NEYYATTINKARA-695 603
9. LIYAKATH ALI KHAN, S/O.MEHABOOB ALIKHAN,
NOOR MAHAL, N.C,C,JN, CHETTIVILAKOM VILLAGE,
TRIVANDRUM-695 003
10. REHMATH BEEVI, D/O.EBRAHIM KANNU, FARM HOUSE,
PARASUVAIKAL, NEYYATTINKARA-695 603
11. ANIL, S/O.MOHAMMED HANEEFA, FARM HOUSE,
PARASUVAIKAL, NEYYATTINKARA-695 603.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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OP(C).NO.1007/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE CITATION REPORTED IN KLT 2012 (3) 730 (EQUIVALENT CITATION DOWN LOADED COPY)
- P2 COPY OF THE ORDER OF THE SAID LEAVE PETITIONS FILED BY ORDER OF THE SUPREME COURT OF INDIA IN THE S.L.P.(C) NOS.27122/12, 17268/12 & 34754/12.
- P3 COPY OF THE AFFIDAVIT AND PETITION FILED BY K.J.PLANTATION BY E.A.407/2014 DATED 23/10/2014
- P4 COPY OF THE AFFIDAVIT AND PETITION OF E.A.411/2014 IN DISTRICT JUDGE OF PALAKKAD DATED 24/10/2014.
- P5 COPY OF THE AFFIDAVIT AND PETITION OF E.A.414/2014 IN DISTRICT JUDGE OF PALAKKAD DATED 25/10/2014.
- P6 COPY OF THE E.A.408/2014, REPLY AFFIDAVIT DATED 27/10/2014
- P7 COPY OF THE REPLY AFFIDAVIT AGAINST E.A.411/2014 DATED 27/10/2014
- P8 COPY OF THE REPLY AFFIDAVIT AGAINST E.A.414/2014 DATED 27/10/2014
- P9 COPY OF THE ORDER IN E.A.407/2014 ON 04/03/2015.
- P10 COPY OF THE ORDER DATED 4/3/2015 IN E.A.414/2014
- P11 COPY OF THE ORDER DATED 4/3/2015 IN E.A.411/2014.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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P.BHAVADASAN, J.

O.P.(C) No.1007 of 2015

Dated this the 08th day of April, 2015

J U D G M E N T

This is a petition filed under Article 227 of the Constitution of India seeking the following reliefs:

“(i) Issue a direction to the court of First Additional District Judge Palakkad to effect the physical delivery of the property to the petitioner and his siblings, by re-deputing the Amin at earliest by considering the E.A.412/2014, within a time to be fixed by this Court;

(2) To issue a direction to the court of First Additional District Judge Palakkad to dispose all the pending execution applications in E.P.7/2008 without protracting the same, within the time to be fixed by this court in accordance with law, by affording reasonable opportunity of being heard to the petitioner in a time frame manner.

(iii) Issue a direction to the court of First Additional District Judge Palakkad to reconsider the Ext.P9 to Ext.P11 by considering the Rule of Resjudicata and rule of Estoppel

and also in the light of Section 5(3) of the Kerala Compensation for Tenants Improvement Act and such other laws.”

2. The petitioner, who was a party to the partition suit, after preliminary decree, moved for final decree and final decree was passed. He thereafter sought delivery of his portion of the property. When delivery was sought to be effected, it was obstructed by the respondents raising claims against property. They filed claim petitions before the execution court and the execution court allowed the claim petition. The matter was taken in appeal and the first appellate court reversed the findings of the trial court and dismissed the petition. That was challenged before this Court in second appeal, which confirmed the finding of the lower appellate court. The attempt to get the order reversed before the Apex Court also failed. Thereafter, when the petitioner moved again for delivery, respondents came forward with claim petitions claiming value of improvements in respect of the property.

3. The petitioner resisted the petitions on several grounds and also pointed out that they, after having failed in their attempt to succeed in the first claim petition, now have come forward with a dubious petition and they are not only not entitled to any value of improvements, but the claim is also barred by *res-judicata*.

4. The grievance of the petitioner is that even though the claim petition was filed long ago, they are being kept pending. The right of the petitioner is affected. He is unable to enjoy the fruits of the decree i.e., to get the property which is allotted to him as per the decree in the partition suit. He therefore prays that the claim petitions which are pending i.e., claiming value of improvements etc. may be directed to be disposed of as expeditiously as possible, at any rate within a time to be fixed by this Court.

5. In the nature of the order that is proposed to be passed, it is felt that notice to the respondents is unnecessary.

This petition is disposed directing the First Additional District Judge, Palakkad to take up E.A.s pending in E.P.No. 7/2008 in O.S.No. 1/1964 and dispose them of as expeditiously as possible, at any rate, within a period of three months from the date of re-opening of the court after summer vacation.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge