

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

OP(C).No. 1066 of 2015 (O)

(E.P.NO.237/2012 IN OS.NO.419/2008 OF PRINCIPAL SUB COURT, KOTTAYAM)

PETITIONER :

**P.K.PURUSHOTHAMAN,
KALARICKAL HOUSE, PALLOM KARA,
NATTAKOM VILLAGE, KOTTAYAM.**

**BY ADVS.SRI.S.RANJIT (KOTTAYAM)
SRI.GOKUL DAS V.V.H.**

RESPONDENT :

**SAJIMON,
PALANTHANATHU HOUSE, NATTASSERY KARA,
MUTTAMBALAM VILLAGE, KOTTAYAM, PIN-686 004**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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OP(C).No. 1066 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF E.P. NO.237/2012 IN OS NO.419/2008 BEFORE THE SUBORDINATE JUDGE'S COURT, KOTTAYAM
- EXHIBIT P2: TRUE COPY OF THE JUDGMENT DATED 11.3.2013 IN OP(C) NO.946/2013
- EXHIBIT P3: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER
- EXHIBIT P4: TRUE COPY OF THE ORDER DATED 26.3.2014 E.P. NO.237/2012 IN OS NO.419/2008 BEFORE THE SUBORDINATE JUDGES COURT, KOTTAYAM
- EXHIBIT P5: TRUE COPY OF THE ORDER DATED 22.5.2014 IN OP(C) NO.1157/2014 OF THIS HON'BLE COURT
- EXHIBIT P6: TRUE COPY OF THE COMMISSION REPORT FILED IN EP NO.237/2012 BEFORE THE PRINCIPAL SUB COURT, KOTTAYAM
- EXHIBIT P7: TRUE COPY OF THE OBJECTION TO THE COMMISSION REPORT
- EXHIBIT P8: TRUE COPY OF THE DELAY CONDONATION PETITION FILED IN EP NO.237/2012 OF THE PRINCIPAL SUB COURT, KOTTAYAM
- EXHIBIT P9: TRUE COPY OF THE REVIEW PETITION FILED IN EP NO. 237/2012 OF THE PRINCIPAL SUB COURT, KOTTAYAM.
- EXHIBIT P10: TRUE COPY OF THE OBJECTION TO THE DELAY CONDONATION PETITION
- EXHIBIT P11: TRUE COPY OF THE OBJECTION TO THE REVIEW PETITION
- EXHIBIT P12: TRUE COPY OF THE ORDER DATED 27.3.2015 IN DELAY CONDONATION PETITION FILED EP NO.237/2012 OF THE PRINCIPAL SUB COURT, KOTTAYAM
- EXHIBIT P13: TRUE COPY OF THE ORDER DATED 27.3.2015 IN THE REVIEW PETITION IN EP NO.237/2012 OF THE PRINCIPAL SUB COURT, KOTTAYAM.
- EXHIBIT P14: TRUE COPY OF THE ORDER DATED 27.3.2015 IN EP NO. 237/2012 OF THE PRINCIPAL SUB COURT, KOTTAYAM.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

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P.A.TO JUDGE

B.KEMAL PASHA, J.

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O.P.(C). No.1066 of 2015

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Dated this the 10th day of June, 2015

J U D G M E N T

Exhibit P14 order dated 27.03.2015 passed by the Subordinate Judge's Court, Kottayam in E.P.No.237 of 2012 in O.S.No.419 of 2008 is under challenge. It seems that initially, through Exhibit P4 order, the court below had ordered to proclaim and sell 5 cents of property out of 4.3 Ares of property, excluding the building thereon. An upset price of ₹8,50,000/- was fixed. A Commissioner was appointed to locate such a plot available for sale. On locating such a spot, the Commissioner has reported that only a 3 feet width pathway could be provided to the said 5 cents of property and on providing a 10 feet width pathway,

the portions of the residential building would have to be demolished. It was also reported that on providing a 10 feet width pathway, the upset price already fixed could have been fetched and on providing a 3 feet width pathway as is mentioned in plan No.3, it could fetch an amount of ₹6,00,000/- approximately. The court below through Exhibit P14 order fixed the upset price as ₹6,00,000/- and ordered the proclamation and sale of 5 cents as noted in plan No.3 of the commissioner's report. The said order is under challenge.

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

3. On a perusal of Exhibit P14 order and on hearing either side, it has come out that the only course open to the court below is to proclaim the sale of such a 5 cents of property. At the same time, as an access to the property a 3 feet width pathway has to be provided. The said pathway is over and above the extent of 5 cents. On going through Exhibit P14, this Court does not find any illegality, irregularity

or jurisdictional error in the matter. Let the proclamation and consequent sale continue as ordered. This Court does not find any merit in the Original Petition (Civil), and it is liable to be dismissed.

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

Sd/-
B.KEMAL PASHA
JUDGE

DSV/11/6/15