

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

OP(C) .No. 1117 of 2015 (O)

IN O.S.NO.392/1999 OF ADDITIONA MUNSIF COURT, ALAPPUZHA

PETITIONER(S)/DECREE HOLDER:

P.V.SIVANANDAN,
AGED 74 YEARS, S/O.VELAYUDHAN THANDAN,
KALAMKUTTIKATTU HOUSE,
CHARAMANGALAM, KANJIKUZH, CHERTHALA.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENT(S)/JUDGMENT DEBTORS:

1. P.V.SUGUNAN,
NIKARTIL, CHARAMAGALAM,
KANJIKUZH, CHERTHALA.
2. P.V.SATHEESAN,
SARIN NIVAS, VAYALAR EAST, CHERTHALA.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1: TRUE COPY OF THE DECREE DT.20.06.2000 IN
C.M.A.NO.58/99.

EXHIBIT-P2: TRUE COPY OF THE EXTRACT OF THE EXECUTION PETITION
AS E.P.NO.315/2000.

EXHIBIT-P3: TRUE COPY OF THE ORDER DT.16.08.2010 IN
E.A.NO.407/2009 IN E.P.NO.315/2000 IN
O.S.NO.392/1999.

EXHIBIT-P4: TRUE COPY OF THE MAHAZOR SUBMITTED BY THE ADVOCATE
COMMISSIONER AND SURVEYOR.

EXHIBIT-P4 (A) : TRUE COPY OF THE REPORT SUBMITTED BY THE ADVOCATE
COMMISSIONER AND SURVEYOR.

EXHIBIT-P4 (B) : TRUE COPY OF THE PLAN SUBMITTED BY THE ADVOCATE
COMMISSIONER AND SURVEYOR.

EXHIBIT-P5: TRUE COPY OF E.A.NO.59/13 IN E.P.NO.315/2000 IN
O.S.NO.392/1999.

EXHIBIT-P6: TRUE COPY OF THE ORDER DT.20.12.2014 IN
E.A.NO.59/2013 IN E.P.NO.2000 IN O.S.NO.392/99.

EXHIBIT-P7: TRUE COPY OF THE E.A.NO.25/2015 IN E.P.NO.315/2000.

EXHIBIT-P8: TRUE COPY OF THE ORDER DT.18.03.2015 OF THE HON'BLE
ADDITIONAL MUNSIFF, ALAPPUZHA IN E.A.NO.25/2015 IN
E.P.NO.315/2000.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

B.KEMAL PASHA, J.

=====

O.P.(C). No.1117 of 2015

=====

Dated this the 25th day of May, 2015

J U D G M E N T

Petitioner is challenging Exhibits P6 and P8 orders passed by the court below in E.A.No.59 of 2013 and E.A.No.25 of 2015 in E.P.No.315 of 2000 in O.S.No.392 of 1999.

2. A compromise decree was passed and later it was put in execution. For executing the decree, a Commissioner was appointed by the court below and a Surveyor was also deputed. Even though specific directions were given to the Commissioner and the Surveyor as to how the property should be measured out, overlooking those directions, measurement was carried out based on the Re-survey plan alone. The report and plan were challenged by the petitioner before the court below. Consequently, Exhibit P6 order was passed, thereby remitting the Commissioner's report and plan to the Commissioner and Surveyor by the court below.

Exhibit P6 is a speaking order, which reveal the deficiencies committed by the Commissioner and the Surveyor in executing the order.

3. Thereafter, E.A.No.25 of 2015 was filed by the petitioner praying for the appointment of another Commissioner and Surveyor by stating that the petitioner has raised serious allegations against the Commissioner and the Surveyor. This Court has perused Exhibit P5 objections raised by the petitioner as against the Commissioner's report and plan. It seems that no personal allegations are levelled against the Commissioner or the Surveyor. What has been pointed out in Exhibit P5 is that the Commissioner has not adhered to the directions contained in the compromise decree as well as the order in the commission application. In Exhibit P5, the petitioner has specifically pointed out the deficiencies occurred on the part of the Commissioner in executing the order. Apart from that, no other allegations are there as against the Commissioner.

When no such personal allegations are there, normally a Commission report can be remitted to the very same Commissioner only for curing the defects and to execute the order in a proper manner. In the absence of any personal allegations against the Commissioner and the Surveyor, this Court is also of the view that the course adopted by the court below is right and there is absolutely nothing to interfere with Exhibits P6 and P8 at present. In case the Commissioner and the Surveyor are not doing the works properly in executing the order, the same can again be challenged by the petitioner. This order will not stand in the way of the petitioner to challenge the acts of the Commissioner and the Surveyor, if in any way, he is aggrieved again.

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

Sd/-

B.KEMAL PASHA
JUDGE