

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OP(C).No. 1192 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN OS 969/2014 OF II ADDITIONAL MUNSIF'S
COURT, ERNAKULAM

PETITIONER(S):

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1. ROSILY THANKACHAN, AGED 50 YEARS, W/O.THANKACHAN
NOW RESIDING AT VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM
 2. THANKACHAN,,
AGED 53 YEARS, S/O.VARGHESE, PALTHUTHAYIL HOUSE
POONKAVU, PATHIRAPPILLY.P.O, ALAPPUZHA
NOW RESIDING AT VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM.

BY ADVS.SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.N.MANMADAN
SRI.M.S.IMTHIYAZ AHAMMED

RESPONDENT(S):

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1. RAJAKRISHNAN
AGED 57 YEARS, S/O.KRISHNAN, SOUPARNIKA
34/160, GIRINAGAR NORTH, ELAMKULAM VILLAGE
KANAYANNUR TALUK.PIN 682020.
 2. TELMA, ,
AGED 51 YEARS, D/O.SOURO ALIAS XAVIER, VIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK
ERNAKULAM PIN 682304.
 3. TENCY,,
AGED 33 YEARS, D/O.SOURO ALIAS XAVIER, VIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK
ERNAKULAM PIN 682304.
 4. LAISSA, ,
AGED 31 YEARS, SOURO ALIAS XAVIER, VIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK
ERNAKULAM PIN 682304.

5. TELS, ,
AGED 57 YEARS, D/O.V.T.JOSEPH, VIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK
ERNAKULAM PIN 682304.
6. THANKAMANI, ,
AGED 55 YEARS, D/O.V.T.JOSEPH, VIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK
ERNAKULAM PIN 682304.
7. JESSY,
AGED 53 YEARS, D/O.V.T.JOSEPHVIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK
ERNAKULAM PIN 682304.
8. SHERLY,
AGED 37 YEARS, D/O.VINCENT, VIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK
ERNAKULAM PIN 682304.
9. TELMA,
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM PIN 682304.
10. JIJO VARGHESE, ,
S/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM PIN 682304.
11. JESSYMOL VARGHESE,
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM PIN 682304.

R1 BY ADV. SRI.S.VINOD BHAT
R1 BY ADV. SRI.LEGITH T.KOTTAKKAL
R1 BY ADV. SRI.K.A.SHAJI MATHEW

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

P1:TRUE COPY OF THE PLAINT IN OS.NO.969/2014.

P2:TRUE COPY OF THE IA.NO.5151/2014 IN OS.NO.969/2014 SUPPORTED BY THE AFFIDAVIT OF THE PETITIONER

P3:THE REPORT AND ROUGH PLAN SUBMITTED BY ADVOCATE COMMISSIONER R. RETHEESH

P4:TRUE COPY OF THE EP.NO.57/2010 IN OS.NO.280/2001

P5:TRUE COPY OF EA.NO.162/2015 IN EP.NO.57/2010 IN OS.NO.280/2001

P6:TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND PETITIONER

P7:TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONERS TO THE REPORT OF THE AMIN IN EP.NO.57/2010 IN OS.NO.280/2001

P8:TRUE COPY OF THE EA.NO.163/2015 IN EP.NO.57/2010 IN OS.NO.280/2001

P9:TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND PETITIONER

P10:TRUE COPY OF THE ORDER PASSED IN EA.NO.162/2015 IN EP.NO.57/2010 IN OS.NO.280/2001 DATED 07.04.2015

P11:TRUE COPY OF THE ORDER IN EA.163/2015 IN EP.NO.57/2010 IN OS.NO.280/2001 DATED 07.04.2015

RESPONDENT(S)' EXHIBITS

R1(A) TRUE COPY OF THE DECREE DTD 13.4.2004 IN OS.280/01

R1(B) TRUE COPY OF THE SKETCH PREPARED BY VILLAGE OFFICER, MARADU

R1(C) TRUE COPY OF THE PETITION EA.170/10 IN EP.57/2010 IN OS.280/01.

R1(D) TRUE COPY OF THE JUDGMENT DTD 6.2.15 IN EX.S.A.3/15.

R1(E) TRUE COPY OF THE EA.147/15 IN EA.170/10 IN EP.57/10 IN OS.280/01

R1(F) TRUE COPY OF THE JUDGMENT DTD 1.4.15 IN OPC.955/15.

R1(G) PHOTOGRAPHS.

// True Copy //
PA to Judge

B. KEMAL PASHA, J.

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O.P.(C) No.1192 of 2015
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Dated this the 1st day of July, 2015

J U D G M E N T

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At the time of passing the final decree, it was found that a division by metes and bounds was not possible and thereby the court below has ordered the sale of the property in public auction. Auction was conducted and the present 1st respondent is the bidder in auction. Now, proceedings for delivery is in progress. At that stage, it seems that the petitioners have come up with a claim that the petitioners are in possession of 1.5 cents of property, which is shown as B Block in Ext.R1(b) plan. Instead of basing their claim over 1.5 cents of property shown in Ext.R1(b), they are relying on Ext.P3, which is a rough sketch attached to the Commissioner's report. According to the petitioners, the present attempt is to take away the building situated in the 1.5 cents of property under the guise of delivery of 8.5 cents of property.

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

3. The learned counsel for the respondents has pointed out that the petitioners are claiming adverse possession in respect of 1.5 cents of property and at the same time, the said claim is presently mooted against the present 1st respondent, who is the auction purchaser, alone. According to the learned counsel for the 1st respondent, the 1st respondent is claiming title over 8.5 cents only, which is shown as Plot A in Ext.R1(b) plan. The delivery proceedings shall be effected in terms of Ext.R1(b) and the court below shall see that Plot A in Ext.R1(b) and the structures in it alone is delivered to the 1st respondent.

With the said observations, this O.P.(Civil) is disposed of.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/01/07

// True Copy //
PA to Judge