

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP(C).No. 75 of 2014 (O)

PETITIONERS :

1. K.P VARGHESE, AGED 46 YEARS, S/O.POULOSE, KANJIRATHUMKUDY VEETIL,
PANICHAYAM KARA, ASAMANNOOR VILLAGE, PERUMBAVOOR.
2. ULAHANNAN, AGED 63 YEARS
S/O.POULOSE, KANJIRATHUMKUDY VEETIL, ASAMANNOOR KARA
ASAMANNOOR VILLAGE, PERUMBAVOOR.
3. POULOSE, AGED 84 YEARS
S/O.ULAHANNAN, KANJIRATHUMKUDY VEETIL
ASAMANNOOR KARA, ASAMANNOOR VILLAGE, PERUMBAVOOR.

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.P.A.ISMAIL
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENTS :

1. KUNJAMMA, S/O.ULAHANNAN, KANJIRATHUMKUDY VEETIL
ASAMANNOOR KARA, ASAMANNOOR VILLAGE, PERUMBAVOOR, PIN: 683 549.
2. ULAHANNAN, S/O.GEEVARGHESE, KANJIRATHUMKUDY VEETIL
ASAMANNOOR KARA, ASAMANNOOR VILLAGE, PERUMBAVOOR, PIN: 683 549.
3. P.A.MOHANAN,S/O.AYYAPPAN, PARAKKATTU VEETIL, PANICHAYAM KARA
ASAMANNOOR VILLAGE, NEDUNGAPRA P.O., PIN: 683 545.
4. C.K.KRISHNAN, S/O.KUNJAN, CHERUVALLY VEETIL, PANICHAYAM KARA
ASAMANNOOR VILLAGE, NEDUNGAPRA P.O. - 683 545.
5. C.K.SUGATHAN,S/O.KUTTAPPAN, CHERUVALLY VEETIL, PANICHAYAM KARA
ASAMANNOOR VILLAGE, NEDUNGAPRA P.O. - 683 545.
6. C.K.THAMBAN, S/O.IKKORAN, CHERAMMAYATH VEETIL, PANICHAYAM KARA
ASAMANNOOR VILLAGE, NEDUNGAPRA P.O. - 683 545.

R1 & 2 BY ADVS. SRI.DINESH R.SHENOY
SMT.N.M.SHEENA DAS
SMT.DRISYA SURENDRAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-10-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 75 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF PLAINT DTD. 09/01/2012 IN OS NO.14 OF 2012 OF THE MUNSIFF'S COURT, PERUMBAVOOR.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT DTD. NIL IN EXT.P1

EXT.P3: TRUE COPY OF I.A NO.255 OF 2013 DTD 05/02/2013.

EXT.P4: TRUE COPY OF OBJECTIONS DTD. 06/02/2013 IN EXT.P3

EXT.P5: TRUE COPY OF I.A NO.289 OF 2013 DTD. 08/02/2013.

EXT.P6: TRUE COPY OF OBJECTIONS DTD. 16/02/2013 IN EXT.P5

EXT.P7: TRUE COPY OF THE JUDGMENT DATED 04/09/2004 IN O.S NO.393/1998.

EXT.P8: TRUE COPY OF THE ORDER DTD. 10/12/2008 IN E.P NO.98/2007 IN OS NO.393/1998.

EXT.P9: TRUE COPY OF JUDGMENT DATED 14/9/2009 IN WPC NO.6389/2009.

EXT.P10: TRUE COPY OF COMMISSION REPORT AND ROUGH SKETCH DTD. 12/8/1998 IN O.S NO.393/1998.

EXT.P11: TRUE COPY OF COMMON ORDER DTD. 27/11/2013 IN I.A NO.255 OF 2013 AND IA NO.289/2013 IN O.S NO.14 OF 2012.

RESPONDENT(S)' EXHIBITS

EXT.R1(a) : COPY OF THE DECREE IN O.S.NO.393/1998, MUNSIFF COURT, PERUMBAVOOR

/TRUE COPY/

P.A TO JUDGE

AV

K.ABRAHAM MATHEW, J.

O.P.(C).No.75 of 2014

Dated this the 19th day of October, 2015

J U D G M E N T

Petitioners are defendants 1 to 3 in O.S.No.14 of 2012 of Munsiff's Court, Perumbavoor. The first respondent herein filed O.S.No.393 of 1998 for a perpetual injunction. By Ext.P7 judgment, the suit was decreed. The property had been measured and the plan prepared by the Commissioner was made part of the decree. Later, the first respondent filed E.P.No.98 of 2007 for the assistance of the Court to construct a boundary wall along the boundary fixed by the Court. By Ext.P8 order, the Execution Court dismissed it. This was challenged in W.P.(C).No.6389 of 2009. As seen from Ext.P9, this Court found that the first respondent may enforce her legal rights and the writ petition was closed. Thereafter, the first respondent along with her husband, who is the second respondent in this original petition, filed O.S.No.14 of 2012 to restrain the petitioners from interfering with their right to put up a wall along the boundary line fixed in the earlier suit. The petitioners filed Exts.P3 and P5 applications to depute a Commissioner to ascertain certain facts and to measure the property on the basis of survey plan. By the impugned order

the trial court has dismissed the said applications.

2. Heard.

3. The boundary between the properties of the parties concerned have already been fixed in the earlier suit, O.S.No.393 of 1998. The plan has been made part of the decree in that suit. So there is no question of ascertaining the boundaries again. The other facts sought to be ascertained by the Commissioner are also irrelevant. Moreover, it is seen from the affidavit filed along with Ext.P3 that no reason was stated to depute a Commissioner. So, I am of the view that the learned Munsiff was right in dismissing the applications.

In the result, this original petition is dismissed.

Sd/-
K.ABRAHAM MATHEW, JUDGE