

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

OP(C).No. 1333 of 2015 (O)

OS.NO. 51/2014 OF PRL.MUNSIFF COURT, NEYYATTINKARA

PETITIONER(S):

-
1. R.MEENAKUMARI,
EASWARAVILASOM BUNGALOW, KUNNUMAMOODU,
PALUKAL DESOM, PALUKAL VILLAGE, NEYYATTINKARA,
PRESENTLY RESIDING AT T.C 55/315 AMRITHA APARTMENT,
KAIMANOM, THIRUVANANTHAPURAM.
 2. K.SIKHIVAHANAN NAIR, OF DO. DO.

BY ADV. SRI.J.HARIKUMAR

RESPONDENT(S):

-
1. A.J.JACOB,
THOTTATHIL VEEDU, MARUTHOOR DESOM,
NEYYATTINKARA VILLAGE, NEYYATTINKARA TALUK- 695 121
 2. RAJESWARI,
KANNAMASSERI VEEDU, MARUTHOOR DESOM,
NEYYATTINKARA VILLAGE, NEYYATTINKARA TALUK- 695 121

BY ADV.SRI.KRISHNADAS P. NAIR

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 1333 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PLAINT DATED 09.01.2014 IN OS.NO.51/2014 PENDING BEFORE THE PRINCIPAL MUNISIFF' COURT, NEYYATTINKARA
- P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE FIRST DEFENDANT 2014 IN OS.NO.51/2014
- P3: TRUE COPY OF THE OBJECTION FILED BY THE SECOND DEFENDANT 2014 IN OS.NO.51/2014
- P4: TRUE COPY OF THE IA.NO.1553/2015 IS OS.NO.51/2014 PENDING BEFORE THE PRINCIPAL MUNISIFF'S COURT, NEYYATTINKARA
- P5: TRUE COPY OF THE OBJECTION FILED BY FIRST RESPONDENT
- P6: TRUE COPY OF THE OBJECTION FILED BY SECOND RESPONDENT
- P7: TRUE COPY OF THE ORDER IN IA.NO.1553/2015 DATED 23.05.2015 RECEIVED ON 02.06.2015

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

P.BHAVADASAN, J.

O.P.(C) No.1333 of 2015

Dated this the 16th day of June, 2015

J U D G M E N T

Under challenge is Ext.P7 order, whereby, the lower court has dismissed the Commission application on the sole ground that there is no specification in the Commission application of what exactly the Commissioner has to do.

2. The suit property, as could be seen from the schedule to the plaint, is a little over 6 cents. This Court is given to understand that the relief sought for is one for recovery of possession and also various other reliefs. If recovery of possession is involved, necessarily the property will have to be identified for an executable decree to be passed in case the suit is to be decreed. The lower court was not justified in holding that the purpose of which the Commission is sought for is not mentioned in the petition and it does not appear to be so. A perusal of Commission application shows the matters to be ascertained which reads

as follows:

“Matters to be ascertained

(a) Prepare a plan after measuring out the property covered by the Settlement deed NO. 241/1986 and to locate the plaint property and note the structures thereon.

(b) Prepare a mahazar and report regarding the nature and lie of the plaint schedule property and the structures thereon.

(c) To note the mischief committed by the defendants in the plaint property.

(d) Such other matter which the plaintiffs and their agents ask at the time of visit, may also be ascertained.”

3. The prayer is specific and clear. It is to locate the plaint schedule property with the structures thereon that the Commission application has been filed. As already stated, since recovery of possession is also involved, it is absolutely necessary that the property of which the relief is sought for is properly identified. That is what the plaintiffs have prayed for in this original petition.

This petition is allowed and the impugned order is set aside. The court below is directed to depute a Commissioner and the defendant will also be entitled to submit his work memo.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge