

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

OP(C).No. 1583 of 2015 (O)

E.P.NO.401 OF 2009 IN O.S.NO.342 OF 1972 OF THE II ADDITIONAL MUNSIF
COURT, NEYYATTINKARA

PETITIONER(S) :

YESUDASAN, AGED 45 YEARS.
S/O.AZARI, POOVANNARATHALA VEEDU, AYIRAYIL DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM.

BY ADVS.SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.
SRI.GOVIND PADMANAABHAN
SRI.AJIT G.ANJARLEKAR

RESPONDENT(S) :

1. AMBROSE ERNOSE,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
2. AMBROSE RESALAYYAN,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
3. J.LAISAL,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
4. J.L.MINI,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
5. J.L.SIMI,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
6. J.L.SUMA,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.

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7. JAYA BHAI,
W/O.LARSON, PARAMBUTHOTTATHU VALIYAVILA VEEDU,
AYIRA DESOM, KARODE VILLAGE,
THIRUVANANTHAPURAM- 695 502.
 8. MARY BHAI,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
 9. LARSON JAPAMONI,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
 10. LARSON MOHANDAS,
PARAMBUTHOTTATHU VALIYAVILA VEEDU, AYIRA DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
 11. PONNAN CHELLAPPAN,
POOVANNARATHALA VILAKATHU PUTHEN VEEDU,
AYIRAYIL DESOM, KARODE VILLAGE, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM- 695 502.
 12. PONNAN PAULOSE,
POOVANNARATHALA VILAKATHU PUTHEN VEEDU,
AYIRAYIL DESOM, KARODE VILLAGE, NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM- 695 502.
 13. ISRAYEL MANONMANI,
PARAMBUTHOTTAM PURAYIDOM, AYIRAYIL DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
 14. PHILOMINA @ PREMALATHA,
MAHADEVAR VILAKATHU VEEDU, AYIRAYIL DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
 15. DEVA BALA SUNDARAM, S/O.HARIS NADAR,
MAHADEVAR VILAKATHU VEEDU, AYIRAYIL DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
 16. ROSILY, W/O.JOHNSON,
UDAYAN THACHANVILA PURAYIDOM, AYIRAYIL DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
 17. ANITHA , D/O.JOHNSON,
UDAYAN THACHANVILA PURAYIDOM, AYIRAYIL DESOM,
KARODE VILLAGE, THIRUVANANTHAPURAM- 695 502.
- R1 BY ADV. SRI..GEORGE VARGHESE(PERUMPALLIKUTTIYIL) (COVEATOR)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: A TRUE COPY OF JUDGMENT IN OS NO.342/1972 OF IIND ADDITIONAL MUNSIF COURT, NEYYATTINKARA DATED 26.03.1980.**
- P2: A TRUE COPY OF JUDGMENT IN OS NO.725/1976 OF THE 1ST ADDITIONAL MUNSIF COURT, NEYYATTINKARA DATED 31.05.1978.**
- P3: A TRUE COPY OF THE COMMISSION REPORT IN I.A NO.4351/1998 IN OS NO.342/1972 ON THE FILE OF IIND ADDITIONAL MUNSIF COURT, NEYYATTINKARA DATED 04.06.2002.**
- P3(A): A TRUE COPY OF THE PLAN.**
- P4: A TRUE COPY OF THE JUDGMENT IN IA NO.4351/1998 IN OS NO.342/1972 OF THE IINA ADDITIONAL MUNSIF COURT, NEYYATTINKARA DATED 21.10.2002.**
- P5: A TRUE COPY OF THE ORDER IN EP NO.401/2009 IN OS NO.342/1972 OF IIND ADDITIONAL MUNSIF COURT, NEYYATTINKARA DATED 05.08.2011.**
- P6: A TRUE COPY OF EA NO.582/2011 IN EP NO.401/2009 IN OS NO.342/1972 ON THE FILE OF IIND ADDITIONAL MUNSIF COURT, NEYYATTINKARA DATED 06.09.2011.**
- P7: A TRUE COPY OF THE ORDER IN EA NO.582/2011 IN EP NO.401/2009 IN OS NO.342/1972 OF IIND ADDITIONAL MUNSIF COURT, NEYYATTINKARA DATED 20.09.2011.**
- P8: A TRUE COPY OF EA NO.607/2011 IN EP NO.401/2009 IN OS NO.342/1972 ON THE FILE OF IIND ADDITIONAL MUNSIF COURT, NEYYATTINAKRA DATED 24.09.2011.**
- P9: A TRUE COPY OF OBJECTION FILED BY HE PETITIONER DATED 27.10.2011 IN EA NO.607/2011 IN OS NO.342/1972.**
- P10: A TRUE COPY OF APPEAL, RFA NO.128/2011 FILED BY THE PETITIONER AND OTHERS BEFORE THE SUB COURT, NEYYATTINKARA DATED 25.11.2011.**
- P11: A TRUE COPY OF IA NO.2172/2011 IN RFA NO.128/2011 FILED BY THE PETITIONER AND OTHERS BEFORE THE SUB COURT, NEYYATTINKARA DATED 25.11.2011.**
- P12: A TRUE COPY OF IA NO.2234/2011 IN RFA NO.128/2011 FILED BY THE PETITIONER AND OTHERS BEFORE THE SUB COURT, NEYYATTINKARA DATED 03.12.2011.**

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**P13: A TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
OP(C) NO.4109/2011 DATED 04.12.2012.**

**P14: A TRUE COPY OF IA NO.667/2013 IN RFA NO.128/2011 FILED BY
RESPONDENTS 1 TO 10 BEFORE THE SUB COURT, NEYYATTINKARA
DATED 12.03.2013.**

**P15: A TRUE COPY OF IA NO.1606/2015 IN OS NO.342/1972 FILED BY
THE PETITIONER DATED 17.03.2015.**

**P16: A TRUE COPY OF ORDER IN EA NO.607/2011 IN EP NO.401/2009 IN
OS NO.342/1972 OF IIND ADDITIONAL MUNSIFF COURT, NEYYATTINKARA
DATED 15.06.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(C) No.1583 of 2015
.....

Dated this the 8th day of July, 2015

J U D G M E N T

A final decree has been passed and the same is presently under challenge. The appeal has been belatedly filed with a petition to condone the delay of 3920 days. The appeal has not been so far admitted.

2. According to the respondents, the delivery was effected on 23.09.2011. According to the learned counsel for the petitioner, the delivery effected was a symbolic delivery as the petitioner, who is one of the sharers, is occupying the properties still. The petitioner cannot take such a contention in view of Order XXI Rule 36 of the Code of Civil Procedure, 1908, as per which a tenant, who is duly inducted or the person in possession of the property, who is not bound by

the decree, alone can claim that delivery effected was only a symbolic delivery. The delivery was effected through Order XXI Rule 35 CPC and therefore, it cannot be said that delivery in this case was symbolic delivery.

3. Respondents wanted to make a fencing on the boundary of their property and the same was resisted by the petitioner. Then the respondents approached the court below through E.A.No.607/2011 in E.P.401/2009 in O.S.No.342/1972 for enabling them to erect the fencing and to put up a boundary. It seems that through Ext.P16 the court below has passed an order as *“Heard. Allowed. Advocate V.K. Bindhu is appointed as the Commissioner. Pay batta of ₹2,000/- to the Commissioner. For Commission report 27.06.2015.”* There is absolutely no discussion in the matter regarding the questions raised by the petitioner in the counter, as well as the matters noted in the IA. The court below, without addressing any of the contentions, has passed a one sentence order which is clearly cryptic in

nature. The impugned order is liable to be set aside on that score itself.

In the result, this Original Petition is allowed by directing the court below to dispose of the IA on merits, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. It is made clear that this Court has not entered any finding on the merits of the matter.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge