

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

OP(C).No. 1816 of 2015 (O)

OS 197/2008 OF ADDITIONAL MUNSIF COURT - II, ERNAKULAM
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PETITIONER(S):

**BINO T. ABRAHAM, AGED 48 YEARS,
S/O. LATE ABRAHAMA PHILIPPOSE, BEENA COTTAGE,
ULIYACOVIL P.O., KOLLAM EAST VILLAGE,
KOLLAM TALUK AND DISTRICT- 691 019,
REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER - K. VASUDEVAN PILLAI,
AGED 60 YEARS, S/O. KRISHNA PILLAI
RESIDING AT SREEVALSOM, KALLAELIBHAGOM P.O.,
KARUNAGAPALLY TALUK, KOLLAM DISTRICT- 690 519.**

**BY ADVS.SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN
SRI.P.T.GIRIJAN
SMT.USHA NARAYANAN**

RESPONDENT(S):

- 1. C.BALACHANDRAN, AGED 64 YEARS,
S/O.E.K. KUNJU NAIR, CHAMAYIL HOUSE, NO. XXXVIII/3355,
KADAVANTHRA DESOM, ELAMKULAM TALUK, KANAYANNUR TALUK,
ERNAKULAM.**
- 2. JOBY, AGED 40 YEARS,
S/O. DENNIS, PALLATH HOUSE, CHERAI,
ERNAKULAM - 683 514.**
- 3. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
REGISTRATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 4. INSPECTOR GENERAL OF REGISTRATION,
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION,
THIRUVANANTHAPURAM - 695 001.**

msv/

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5. THE DISTRICT REGISTRAR (GENERAL),
OFFICE OF THE DISTRICT REGISTRAR (GENERAL),
ERNAKULAM - 682 011.

6. THE SUB REGISTRAR,
MARADU OFFICE OF THE SUB REGISTRAR,
ERNAKULAM - 682 304.

7. THE TAHSILDAR,
KANAYANNUR TALUK, ERNAKULAM - 682 011.

R3 TO R7 BY GOVERNMENT PLEADER SRI.REJI JOSEPH
BY ADV. SRI.P.VISWANATHAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 04-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

OP(C).No. 1816 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE SALE DEED NO. 1499/2007 OF THE SRO MARADU DATED 23/03/2007.

EXHIBIT-P2-TRUE COPY OF THE PLAINT DATED 27/01/2008 IN O.S 197/2008 OF THE MUNSIFF COURT, ERNAKULAM.

EXHIBIT-P3-TRUE COPY OF WRITTEN STATEMENT DATED 05/04/2008 OF THE 1ST DEFENDANT IN O.S 197/2008 OF THE MUNSIFF COURT, ERNAKULAM.

EXHIBIT-P4-TRUE COPY OF THE REPORT DATED 04/08/2011 OF THE ADVOCATE COMMISSIONER ALONG WITH SKETCHES.

EXHIBIT-P5-TRUE COPY OF THE JUDGMENT DATED 28/11/2012 IN O.P (C) 3932/2012.

EXHIBIT-P6-TRUE COPY OF THE DEPOSITION DATED 10/06/2014 OF THE TALUK SURVEYOR.

EXHIBIT-P7-TRUE COPY OF THE DEPOSITION DATED 17/06/2014 OF THE ADVOCATE COMMISSIONER.

EXHIBIT-P8-TRUE COPY OF THE I.A 9472/2014 IN O.S 197/2008 DATED 03/12/2014.

EXHIBIT-P9-TRUE COPY OF THE COUNTER AFFIDAVIT DATED 08/12/2014 TO I.A 9472/2014 IN O.S 197/2008.

EXHIBIT-P10-TRUE COPY OF THE ORDER DATED 20/05/2015 IN I.A 9472/2014 IN O.S 197/2008.

EXHIBIT-P11-TRUE COPY OF THE POWER OF ATTORNEY DATED 22/09/2014.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv/

B. KEMAL PASHA, J.

.....
O.P.(C) No.1816 of 2015
.....

Dated this the 4th day of August, 2015

J U D G M E N T

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Ext.P10 order whereby the request for getting the Commissioner's report and plan in the suit remitted to the Commissioner was dismissed by the court below, is under challenge. The suit is one for declaration that the 1st defendant is not the title holder in respect of the plaint schedule property and also one for a decree of perpetual injunction against trespass etc.

2. It seems that the title deed being claimed by the plaintiff and the title deed being claimed by the 1st defendant is in respect of the very same property. In fact, the identity of the property is not at all in question. Both the parties are claiming the very same property. It seems that the title deed relied on by the 1st defendant is the first in point of time as it was obtained in the year 1993; whereas, the title deed being

claimed by the plaintiff is of the year 2007.

3. As pointed out by the court below in the order, what has been sought for is a negative declaration that the 1st defendant has no title over the plaint schedule property. Once there was an attempt to get the Commissioner's report and plan remitted. As the said attempt failed before the court below, the plaintiff had approached this Court through O.P.(C) No.3932/2012. The same was disposed of by this Court through Ext.P5 order by which the parties were directed to examine the Commissioner and Surveyor before the court below in order to bring out deficiencies, errors or mistakes, if any, in the Commissioner's report so that it could be remitted. The Commissioner as well as the Surveyor were examined. Again, an application was filed by the plaintiff for getting the Commissioner's report remitted as aforesaid. The same has been denied by the court below through Ext.P10 order.

4. Heard learned counsel for the petitioner and

learned counsel for the respondent.

5. The learned counsel for the petitioner has pointed out that the Commissioner ought to have made an attempt to locate the property and identify the property with the aid of the anterior documents. It has been pointed out that the plaintiff as well as the 1st defendant had purchased property from different persons and in such a context, the property ought to have been identified with the aid of anterior documents.

6. On hearing either side, this Court is satisfied that there is no challenge with regard to the identity of the property in the suit. Both the parties are claiming the very same property. In such case, even if the Commissioner's report is set aside or remitted, it would not improve the case of the plaintiff or the case of the 1st defendant in any manner. The matter in controversy is one to be settled in between the plaintiff as well as the 1st defendant for which, the aid of the Commissioner's report is not at all required in

this case. Matters being so, it would be an idle exercise to remit the Commissioner's report, to the Commissioner. O.P. (Civil) is devoid of merits and is only to be dismissed, and I do so.

O.P.(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/04/08

// True Copy //

PA to Judge