

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

OP(C).No. 1821 of 2015 (O)

PETITIONER(S) :

JACOB PAUL, AGED 58 YEARS,
S/O. PAUL, THEKKINIYEDATH, HILLGARDEN COLONY,
PLOT NO.39, TC 27/275, ANCHERY POST,
ANCHERY VILLAGE, THRISSUR,
PIN - 680 006.

BY ADVS.SRI.P.B.KRISHNAN
SRI.SABU GEORGE
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANIAN
SRI.S.NITHIN (ANCHAL)

RESPONDENT(S) :

1. E.A. VARGHESE, AGED 78 YEARS
S/O. AMOZ, EZHUTHUPURAKKAL, MULAMKUNNATHUKAVU DESOM,
KILLANNUR VILLAGE, THRISSUR, PIN-680 581.
2. WILSON, AGED 46 YEARS,
S/O. ESTHAPPANOSE, PARIYAADAN , KUTTANELLOOR DESOM,
KUTTANELLOOR P.O., OLLUR VILLAGE, THRISSUR,
PIN 680 014.
3. PRINCE PAUL, AGED 43 YEARS,
S/O. KUNJIPPALU, PUTHUR THARAYIL, ROSE GARDENS,
KUTTANELLOOR DESOM, KUTTANELLOOR P.O, OLLUR VILLAGE,
THRISSUR, PIN 680 014.

Contd...2/-

AMV

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4. DR. JOJO DAVIS, AGED 39 YEARS,
S/O. DEVASSY, KANJIRATHINKAL, OLARI DESOM,
PULLAZHI P.O., PULLAZHI VILLAGE, THRISSUR,
PIN 680 012.
5. A.V SHAJU, AGED 37 YEARS,
S/O. UMMER, AMBALATH HOUSE, POOTHOLE DESOM,
POOTHOLE P.O., THRISSUR VILLAGE, THRISSUR,
PIN 680 004.
6. UNITED COMMERCIAL BANK (UCO BANK)
PALAKKAD BRANCH, MARKET ROAD,
PALAKKAD 678 014 REPRESENTED BY ITS MANAGER.

BY SRI.GEORGE KARITHANAM VARGHESE,SC,UCO BANK

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Contd...3/-

AMV

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 COPY OF THE PLAINT DATED 4-8-2012 IN O.S NO 2813 OF 2012 ON
 THE FILE OF THE 1ST ADDL. MUNSIFF'S COURT,THRISSUR.
- EXT.P2 COPY OF THE WRITTEN STATEMENT DATED 24-05-2013 FILED BY
 DEFENDANT NO.1 IN O.S NO 2813 OF 2012 ON THE FILE OF THE 1ST
 ADDL. MUNSIFF'S COURT,THRISSUR
- EXT.P3 COPY OF THE WRITTEN STATEMENT DATED 24-05-2013 FILED BY
 DEFENDANT NO 5 IN O.S NO 2813 OF 2012 ON THE FILE OF THE 1ST
 ADDL. MUNSIFF'S COURT,THRISSUR
- EXT.P4 COPY OF THE WRITTEN STATEMENT DATED 16-01-2013 FILED BY
 DEFENDANT NO.6 IN O.S NO 2813 OF 2012 ON THE FILE OF THE 1ST
 ADDL. MUNSIFF'S COURT,THRISSUR
- EXT.P5 COPY OF THE LIST OF DOCUMEMNTS DATED 16-07-2015 FILED BY
 DEFENDANTNO.6 IN O.S.NO.2813 OF 2012 ON THE FILE OF THE 1ST
 ADDL. MUNSIFF COURT, THRISSUR.
- EXT.P6 COPY OF THE ADDITIONAL WRITTEN STATEMENT AND COUNTER
 CLAIM DATED 1-12-2014 FILED BY THE DEFENDANT NO.6 IN O.S
 NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFF'S
 COURT,THRISSUR
- EXT.P7 COPY OF I.A NO 15514 OF 2015 DATED 25-07-2015 FILED BY
 DEFENDANT NO.6 IN O.S NO. 2813 OF 2012 ON THE FILE OF THE 1ST
 ADDL.MUNSIFF'S COURT,THRISSUR

RESPONDENT(S)' EXHIBITS : **NIL**

/TRUE COPY/

PA.TO JUDGE

AMV

SUNIL THOMAS, J.

.....
O.P.(C) No. 1821 of 2015 (O)

.....
Dated this the 28th day of July, 2015

JUDGMENT

This original petition arises from O.S.No.2813 of 2012 on the file of the 1st Additional Munsiff Court, Thrissur, in a suit for declaration that the sale deed dated 03.03.2011 bearing No.717 of 2011 of Kuttanellur SRO in favour of the 6th defendant is not binding on the plaint schedule property or the plaintiff.

2.The 6th defendant, who is the petitioner herein, appeared and filed a written statement denying the claims of the plaintiff, and inter alia, contending that plaintiff had no right over plaint schedule property. It appears that the suit was listed for trial to 24.07.2015 and the trial has commenced. In the meanwhile, the petitioner, on a better legal advise filed I.A.No.15514 of 2015 seeking appointment of an advocate commissioner for measuring and demarcating the property with the help of the taluk surveyor. The grievance of the petitioner herein is that, the court is proceeding with the trial without considering the above I.A.

3. Though, the larger question as to whether the defendant has a duty to establish that the property over which the plaintiff claims right is distinct and different from the property covered by the document, which is impugned in this proceedings, and the question as to whether the application has been filed at the appropriate stage, I feel that the court has to pass an order before completion of the trial.

Hence, I feel that without issuing notice to the respondents, this original petition can be disposed of at this stage itself, by directing the court below to consider I.A.No.15514 of 2015 before the conclusion of the trial, untrammelled by any of the observations made herein.

Sd/-
SUNIL THOMAS, JUDGE

AMV/28/07/