

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. 1824 of 2015 (O)

**AGAINST THE ORDER/JUDGMENT IN AS 61/2015 of ADDL. DISTRICT COURT,
PARAVUR**

PETITIONER(S)/APPELLANT/1ST DEFENDANT :

**THOMAS, AGED 70 YEARS,
S/O.GABRIAL, KARAPALLY HOUSE, MAMPRA KARA
KARUKUTTY P.O., ERNAKULAM DISTRICT.**

**BY ADVS.SRI.T.S.RAJAN
SRI.AKHIL BHASKAR**

RESPONDENT(S)/RESPONDENTS/PLAINTIFF :

**ABRAHAM, AGED 67 YEARS,
W/O.PAULO, PARAMBIL HOUSE, MAMPRAKARA,
PARAKKADAVU VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT-683 101.**

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

AMV

OP(C).No. 1824 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT-P1: COPY OF THE APPEAL SUIT NO.61/15 PENDING BEFORE THE ADDL.DISTRICT COURT, N.PARAVUR.
- EXHIBIT-P2: COPY OF THE I.A.351/2015 IN A.S.NO.61/15 PENDING BEFORE THE ADDL.DISTRICT COURT, N.PARAVUR.
- EXHIBIT-P3: COPY OF THE PLAINT IN O.S.36/11 ON THE FILE OF MUNSIFF COURT, ALUVA DATED 8.01.2011.
- EXHIBIT-P4: COPY OF THE WRITTEN STATEMENT IN O.S.36/11 ON THE FILE OF MUNSIFF COURT, ALUVA DATED 6.1.2012.
- EXHIBIT-P5: COPY OF THE JUDGMENT IN O.S.36/11 ON THE FILE OF MUNSIFF COURT, ALUVA DATED 18.3.2015.
- EXHIBIT-P6: COPY OF THE PATTa NO.334/99 DATED 16.11.99 ISSUED BY THE LAND TRIBUNAL.
- EXHIBIT-P7: COPY OF THE COMPLAINT FILED BY KOCHU THRESSIA BEFORE THE S.I. OF POLICE, ANGAMALY DATED 16.6.2015.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

PA.TO JUDGE

AMV

SUNIL THOMAS, J.

.....

O.P.(C) No.1824 of 2015 (O)

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Dated this the 28th day of July, 2015

JUDGMENT

The sole defendant in O.S.No.36 of 2011 of Munsiff Court, Aluva in a suit for fixation of boundary, is the petitioner herein.

2.The suit was laid by the plaintiff claiming his right over the plaintiff schedule properties. Admittedly, the defendant was a Kudikidappukaran, who has been assigned 10 cents of land. After measuring out the property, the suit was decreed in terms of the survey plan and the survey plan was appended to the decree. The defendant has taken up the decree in appeal. Since there was a delay of ten days, an application for condonation of delay is pending.

3.Claiming that two jack fruit trees standing in the disputed properties have been cut by the plaintiff and is attempting to remove it, the petitioner has approached

this Court on a premise that in the light of the pendency of the delay condonation application, he cannot move the appellate court and seek appropriate relief. He seeks an interim direction to the plaintiff to maintain status quo.

4.The defendant, admittedly being a kudikidappukaran, could not have claimed any right more than the 10 cents of land, given to him. It appears that the main dispute was regarding the pathway on one side of the property assigned to him. In the survey commission, the plaintiff was found to be in possession of more extent of land, over which the defendant is setting up a claim now. In this writ proceedings, I am not inclined to grant a status quo as sought by the petitioner without cogent evidence, on the basis of a vague claim. In the original petition also there is no averment about the exact location of the disputed jack fruit trees and there is no averment that it falls within the 10 cents of kudikidappu assigned to him.

In the light of the above, I am not inclined to grant any relief to him. He may workout his remedies before the court concerned.

This original petition is dismissed.

Sd/-
SUNIL THOMAS, JUDGE

AMV/28/07/