

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP(C).No. 2209 of 2015 (O)

PETITIONER(S):

**JACOB PAUL, S/O.PAUL AGED 58 YEARS
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.SUBRAMANYAN**

RESPONDENT(S):

- 1. E.A.VARGHESE, S/O.AMOZ
AGED ABOUT 78 YEARS, EZHUTHUPURAKKAL
MULAMKUNNATHUKAVU DESOM, KILLANNUR VILLAGE, THRISSUR
PIN-680 581.**
- 2. WILSON, S/O.ESTHAPPANOSE
AGED 46 YEARS, PARIYAADAN, KUTTANELLOOR DESOM
KUTTANELLOOR PO, OLLUR VILLAGE, THRISSUR
PIN -680 014.**
- 3. PRINCE PAUL, S/O.KUNJIPPALU
AGED 43 YEARS, PUTHUR THARAYIL, ROSE GARDENS
KUTTANELLOOR DESOM, KUTTANELLOOR P.O, OLLUR VILLAGE
THRISSUR, PIN -680 014.**
- 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-678014
REPRESENTED BY ITS MANAGER.**

**R1 BY ADV. SRI.N.M..MADHU (CAVEATOR)
R1 BY ADV. SRI.N.M.MADHU
R6 BY ADV. SRI.GEORGE KARITHANAM VARGHESE,SC,UCO B**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - A TRUE COPY OF THE PLAINT DATED 4.8.2012 IN OS NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

EXT.P2 - A TRUE COPY OF THE WRITTEN STATEMENT DATED 24.5.2013 FILED BY DEFENDANT NO.5 IN OS NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

EXT.P3 - A TRUE COPY OF THE WRITTEN STATEMENT DATED 16.1.2013 FILED BY DEFENDANT NO.6 IN OS NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

EXT.P4 - A TRUE COPY OF THE LIST OF DOCUMENTS DATED 16.7.2015 FILED BY DEFENDANT NO.6 IN OS NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

EXT.P5 - A TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT AND COUNTER CLAIM DATED 1.12.2014 FILED BY DEFENDANT NO.6 IN OS NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

EXT.P6 - A TRUE COPY OF IA NO.15514 OF 2015 DATED 25.7.2015 FILED BY DEFENDANT NO.6 IN OS NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

EXT.P7 - A TRUE COPY OF THE JUDGMENT DATED 28.7.2015 OF THIS HON'BLE COURT IN OP(C) NO.1821 OF 2015

EXT.P8 - A TRUE COPY OF THE COUNTER AFFIDAVIT DATED 13.8.2015 FILED BY RESPONDENT NO.1 IN IA NO.15514 OF 2015 IN OS NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

P9 A A TRUE COPY OF THE ORDER DATED 4.9.2015 IN I.A NO.15514 OF 2015 IN O.S NO.2813 OF 2012 ON THE FILE OF THE 1ST ADDL. MUNSIFFS COURT, THRISSUR.

RESPONDENT(S)' EXHIBITS

EXT.R1(A)-COPY OF THE REPORT AND PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER IN O.S.2176/1998 ON THE FILES OF THE II ADDL MUNSIFF COURT, THRISSUR.

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.2209 of 2015

Dated this the 19th day of October, 2015

J U D G M E N T

Petitioner is the 6th defendant in the suit filed by the first respondent for declaration of his title to the plaint schedule property and for some other reliefs. The first respondent denies the petitioner's title and claims that he is its title holder. The property claimed by both parties are those involved in a partition of 1990. According to the petitioner, it changed hands before it became his property under a sale deed. The first respondent purchased the property claimed by him from the 6th respondent, Bank under the SARFAESI Act for the debt incurred by the third respondent, who had got it from the previous owner under a sale deed. The Petitioner filed Ext.P6 commission application to identify the property on the basis of the survey plan and his title deed. By Ext.P9 order the trial court dismissed it. It dismissed the application for the reason that there was inordinate delay in filing it.

2. Heard.

3. Both properties are comprised in the same survey number. Though there was a contention that the earlier suit between the first respondent and the previous owner of the property claimed by the petitioner, in which there was a measurement of the property on the basis of survey plan and title deed and so it is not necessary to take out a commission in this suit, the trial court has not made any observation about it.

4. Mere delay in filing the application was no ground to dismiss it as the nature of the case reveals no room for doubt that it is necessary to identify the property on the basis of the title deeds and the survey plan. The learned counsel for the first respondent, Sri.Madhu, submits that in O.S.No.2176 of 1998 filed by the first respondent against the previous owner of the property claimed by the petitioner a survey plan had been prepared and that is sufficient to dispose of the case. The argument of the learned counsel Sri.P.B.Krishnan is that the survey plan prepared in the other case is not acceptable mainly for the reason that it was a suit for perpetual injunction alone. I have perused the records relating to O.S.2176 of

1998 especially the judgment in it. It was decreed ex parte. It was a suit for injunction simplicitor; title was not in dispute in that case. The first respondent's definite case was that the property claimed by him lies within well-defined boundaries. The suit was based on possession alone. It was unnecessary for the court to appoint a commissioner to identify the property on the basis of title deed and survey plan. The survey plan allegedly prepared in the earlier suit cannot be the basis to take a decision in this case. It is only proper that a commissioner is appointed to measure the properties claimed by both parties on the basis of their title deeds and survey plan. So I am inclined to interfere with the impugned decision. But, for the inordinate delay on the part of the petitioner to file the application he is liable to pay appropriate compensation, which is fixed at Rs.10,000/- (Rupees ten thousand only).

In the result, this O.P is allowed. The impugned order is set aside. Ext.P6 commission application filed by the petitioner will stand allowed on his paying to the first respondent through his counsel in this court Rs.10,000/-

(Rupees ten thousand only) as costs within two weeks.

The receipt shall be filed in the trial court. If the costs is not paid the application will stand dismissed and the learned Munsiff shall proceed with the trial of the suit.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge