

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

OP(C).No. 2342 of 2015 (O)

(I.A.NO.2387/2013 IN OS NO.45/2012 PENDING BEFORE THE ADDL.MUNSIFF'S COURT,
KOLLAM)

PETITIONER:

FR. JOLLY JOSEPH, AGED 48 YEARS
S/O. JOSEPH, ROSE DALE, KANJIRACODE, MULAVANA VILLAGE
KOLLAM TALUK, KOLLAM - 691 501.

BY ADV. FR. JOLLY JOSEPH (PARTY-IN-PERSON)

RESPONDENTS:

1. FR. JAMES PUTHENPURA, AGED 72,
S/O.MATHAI, FORMERLY VICAR, ST.ANTONY'S CHURCH
KANJIRACODE, MULAVANA VILLAGE, KOLLAM TALUK - 691 501.
2. K.C. JOSE, AGED ABOUT 61,
S/O. KOCHUKURISU, FORMERLY TRUSTEE,
ST.ANTONY'S CHURCH, RESIDING AT KUNNUVILA
KANJIRACODE, MULAVANA VILLAGE, KOLLAM TALUK - 691 501.
3. FULGIN, AGED 60,
S/O. MARIAN, FORMERLY EXECUTIVE COMMITTEE MEMBER
ST.ANTONY'S CHURCH, RESIDING AT VIRGIN DALE,
PANAYAMCODE, KANJIRACODE, MULAVANA VILLAGE
KOLLAM TALUK- 691 501.
4. PIOUS, AGED 70.
S/O. ANTONY, EXECUTIVE MEMBER, ST.ANTONY'S CHURCH
RESIDING AT CHARUVILA VEEDU, KANJIRACODE
MULAVANA VILLAGE, KOLLAM TALUK - 691 501.
5. J. JOHNSON, AGED 55,
S/O.JOSEPH CHAZHIKADAN, CONTRACTOR,
ST.ANTONY'S CHURCH, RESIDING AT POOKOLY, KOTTAKKAKAM
KANJIRACODE, MULAVANA VILLAGE, KOLLAM TALUK - 691 501.
6. J. JAYAN, AGED 37,
S/O.JOSEPH, ROSE, DALE,
KANJIRACODE, MULAVANA VILLAGE, KOLLAM TALUK - 691 501.

R1 BY ADVS. SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY
SRI.J.JAYAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-11-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE INJUNCTION ORDER DATED 19/01/2012 STILL IN OPERATION

EXHIBIT-P2-TRUE COPY OF THE AMENDED PLAINT IN O.S 45/2012.

EXHIBIT-P3-TRUE COPY OF THE COMMISSION APPLICATION NO. 2387/2013.

EXHIBIT-P4-TRUE COPY OF THE ORDER DATED 29/11/2014 IN I.A NO.2387/2013.

EXHIBIT-P5-TRUE COPY OF THE COMPLAINT OF PETITIONER DRD.21.4.2015 TO POLICE AGAINST PRINCIPAL'S OBSTRUCTION OF COMMISSION WORK AND POLICE RECEIPT DATED 14/08/2015.

EXHIBIT-P6-TRUE COPY OF THE PHOTOS/COLOUR PRINTS ON A SHEET OF PAPER TAKEN ON 12/03/2015 SHOWING ILLEGAL ACTIVITIES OF RESPONDENTS.

EXHIBIT-P7-TRUE COPY OF THE PRINTS/PHOTOS ON A SHEET OF PAPER TAKEN ON 25/08/2015 SHOWING THE 3 STORIED NEW BUILDING IN JUST COMPETITION WITH THE OLD SCHOOL BUILDING IN PLAINT SCHEDULE PROPERTY AND THE SCHOOL GATE BEING OPENED EVEN ON SUNDAYS.

EXHIBIT-P8-TRUE COPY OF THE JUDGMENT IN OPC 2966/2014 DIRECTED TO DISPOSE O.S 45/2012 IN A YEAR

EXHIBIT-P9-TRUE COPY OF THE ORDER/JUDGMENT DATED 27/07/2015 IN COC 768/2015

EXHIBIT-P10-TRUE COPY OF THE JUDGMENT DATED 28/05/2015 IN OPC 872/2012 DIRECTING TO DISPOSE O.S 45/2012 WITHIN A PERIOD OF 6 MONTHS.

EXHIBIT-P11-TRUE COPY OF THE COMMISSION REPORT DATED 26/06/2015.

EXHIBIT-P12-TRUE COPY OF THE JUDGMENT DATED 15/07/2015 IN OPC 1691/2015 DIRECTING TO DISPOSE THE OBJECTION TO COMMISSION REPORT WITIN A PERIOD OF 2 MONTHS

EXHIBIT-P13-TRUE COPY OF THE OBJECTION PETITIONER ON 08/07/2015 TO COMMISSION REPORT

EXHIBIT-P14-TRUE COPY OF THE COMPLAINT OF PETITIONER DATED 25/09/2015 TO REGISTRAR OF VIGILANCE OF HIGH COURT ADITS POSTAL RECEIPT DATED 25/07/2015.

EXHIBIT-P15-TRUE COPY OF THE ILLEGALLY ALTERED AMENDMENT APPLICATION I.A NO.3551/2015

EXHIBIT-P16-TRUE COPY OF THE OBJECTION TO AMENDMENT PETITION DATED 25/07/2015.

EXHIBIT-P17-TRUE COPY OF THE IMPEADING PETITION I.A 4373/2013

EXHIBIT-P18-TRUE COPY OF THE MANDATORY INJUNCTION APPLICATION IN I.A 1614/2015

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.S.TO JUDGE

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K.ABRAHAM MATHEW J.

O.P.(C) No.2342 of 2015

Dated this the 4th day of November, 2015

JUDGMENT

Petitioner is the plaintiff in O.S.No.45 of 2012 on the file of Additional Munsiff, Kollam. The suit is for declaration of easement right of way through the respondents' property and for some other reliefs. There were four commission reports in the case, when the petitioner filed the 5th application, which was allowed by the court below. By Ext P8 judgment dated 30.1.2015 this court modified the order. There was a direction to dispose of the suit within one year. The commissioner inspected the property and filed his report. The petitioner has filed an objection to it. Thereafter, he filed an impleading application, which has not been disposed of so far. He filed OP(C) No.872 of 2015, in which this court passed a direction to dispose of the suit within a period of six months from 28.5.2015. Now this Original Petition has been filed by him praying for several reliefs.

2. Heard the petitioner who has appeared in person and the learned counsel for the respondents.

3. The first prayer is to grant extension of time by two months for the disposal of the suit. As time was fixed by Ext P10 judgment the petitioner should have filed an application in that case for extension. The first direction was passed on 30.1.2015 to dispose of the suit within one year. The second direction was passed on

20.5.2015 to dispose of the suit within six months. This period of six months will expire within a few days. It is sure that the trial court will not be able to comply with the direction of this court in Ext P10 only because the petitioner is filing applications one after another.

4. The second relief is for a direction to the learned Munsiff to dispose of I..A.No.4373 of 2013, which has been filed for impleadment. This I.A shall be disposed of before the trial starts. The third relief is to quash Ext P11 commission report. This is beyond the scope of this proceedings. The 4th prayer is only to call for the records relating to some I.As, which is not at all a relief. The next relief is to appoint a commissioner for local inspection, which cannot be condoned in this proceedings. The 6th prayer is to direct the trial court to dispose of I.A.No.5633 of 2014 filed for appointment of a new commissioner. This is a matter to be dealt with by the trial court. It shall dispose of the application within a reasonable time. The 7th relief is a direction to "implement" an injunction order. If he has obtained an enforceable order he may take appropriate steps for its enforcement. The 8th relief is to issue a direction to the learned Munsiff to dispose of pending applications, to which there cannot be any objection. The last relief is to issue any direction which this court may deem fit.

5. The petitioner has also a complaint that the objection filed by him to 5th commission report has not been disposed of by the trial court. There is no question of the court's passing an order on an objection. The objection shall be considered at the appropriate

stage.

6. Though I cannot approve of the conduct of the petitioner who appears in person, I am inclined to issue certain directions to the learned Munsiff. He shall dispose of the interlocutory applications before the trial starts. At the same time, the petitioner shall not be allowed to delay the trial by filing unnecessary applications one after another. It may be due to his lack of knowledge of the procedure in courts. But if it amounts to abuse of process of the court the court will be compelled to check it by taking appropriate steps.

In the result, this Original Petition is disposed of with the following directions:

The learned Munsiff shall dispose of the pending applications within two weeks of receipt or production of a copy of this judgment. Immediately thereafter it shall post the case for trial within ten days within which the petitioner and the respondent shall take appropriate steps for the trial. The suit shall be disposed of before the court closes for Christmas holidays this year. I only hope that the petitioner will try to conduct himself in a proper way in court. If his actions amount to abuse of the process of the court, the trial court shall exercise its power to check it.

Sd/-
K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge