IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

OP(C).No. 2451 of 2015 (O)

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(AGAINST THE JUDGMENT IN CMA.NO. 60/2013 OF ADDL. DISTRICT COURT - IV, PALAKKAD)

(IA.NO.576/2013 IN OS.NO. 145/2013 OF MUNSIFF COURT, ALATHUR)

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PETITIONER/APPELLANT/RESPONDENT/DEFENDANT :

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SIDDIQUE, S/O. IBRAHIM SAHIB,
KARAPPADAM VEEDU, MOOLAMKODE P.O.,
KIZHAKKENCHERRY VIA, ALATHUR TALUK,
PALAKKAD DISTRICT,
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
POWJETH K.S., W/O. SIDDIQUE,KARAPPADAM VEEDU,
MOOLAMKODE P.O, KIZHAKKENCHERRY VIA,
ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.LIJU. M.P

RESPONDENT(S)/RESPONDENTS/PETITIONERS/PLAINTIFFS :

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1. VAVACHI @ MOIDEENKUTTY,
   S/O. IBRAHIM SAHIB, SURUMI MANZIL, KORENCHIRA,
   KORENCHIRA P.O, KIZHAKKENCHERRY VIA, ALATHUR TALUK,
   PALAKKAD DISTRICT-678 101

2. ISMAIL, S/O. IBRAHIM SAHIB,
   NISHAD MANZIL, RANDOOTTIKALAM,
   KORENCHIRA P.O, KIZHAKKENCHERRY VIA,
   ALATHUR TALUK, PALAKKAD DISTRICT-678 101

R1 & R2 BY ADV. SRI.P.R.VENKETESH

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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| **EXHIBIT P1** | **TRUE COPY OF THE PLAINT IN O.S NO.145/2013 ON THE FILE OF MUNSIFF'S COURT, ALATHUR** |
| **EXHIBIT P2** | **TRUE COPY OF THE SETTLEMENT DEED NO.449/1958 ON THE FILE OF SRO,ALATHUR** |
| **EXHIBIT P3** | **TRUE COPY OF THE PARTITION DEED NO.1278/1971 ON THE FILE OF SRO, ALATHUR** |
| **EXHIBIT P4** | **TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN EXT-P1 SUIT** |
| **EXHIBIT P5** | **TRUE COPY OF THE BASIC TAX REGISTRER IN RESPECT OF THE PLAINT SCHEDULE PROPERTY** |
| **EXHIBIT P6** | **TRUE COPY OF THE COMMISSION REPORT FILED IN EXT P1 SUIT** |
| **EXHIBIT P7** | **TRUE COPY OF THE ORDER DATED 25-06-2013 PASSED IN IA NO.576/2013 IN EXT-P1 SUIT** |
| **EXHIBIT P8** | **TRUE COPY OF THE JUDGMENT DATED 28-01-2015 PASSED IN CMA NO.60/2013 ON THE FILE OF ADDL. DISTRICT JUDGE-IV,PALAKKAD** |
| **EXHIBIT P9** | **COPY OF THE BASIC TAX REGISTER ISSUED BY THE VILLAGE OFFICE, KIZHAKKENCHERRY-I VILLAGE** |
| **EXHIBIT P10** | **COPY OF THE SKETCH OF THE PLAINT SCHEDULE PROPERTIES ISSUED BY THE VILLAGE OFFICE, KIZHAKKENCHERRY-I VILLAGE** |
| **EXHIBIT P11** | **COPY OF THE LETTER ISSUED BY THE LABOURER ON TERMINATING THE EMPLOYMENT OF TAPPING.** |
| **EXHIBIT P12** | **COPY OF THE AGREEMENT ENTERED BETWEEN THE PETITIONER AND ONE NASAR ON 09/06/2013.** |
| **EXHIBIT P13** | **COPY OF THE PETITION SUBMITTED BEFORE THE DY. S.P., ALATHUR ON 14/06/2013.** |
| **EXHIBIT P14** | **COPY OF THE PLAINT IN OS 483/2011 ON THE FILE OF SUB COURT, PALAKKAD** |
| **EXHIBIT P15** | **COPY OF THE WRITTEN STATEMENT FILED BY MUHAMMED KHANI IN EXT- P14 SUIT.** |

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**EXHIBIT P16 COPY OF THE DEED NO.94/1967 OF SRO, ALATHUR.**

**RESPONDENT(S)' EXHIBITS**

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|---|---|
| EXHIBIT R1(A) | COPY OF THE DOCUMENT NO.282/1991 OF SRO, VADAKKENCHERRY. |
| EXHIBIT R1(B) | COPY OF THE DOCUMENT NO.2106/1996 OF SRO, VADAKKENCHERRY. |
| EXHIBIT R1(C) | COPY OF THE TAX RECEIPT DATED 3/5/2013 |
| EXHIBIT R1(D) | COPY OF THE TAX RECEIPT DATED 9/7/2012 |
| EXHIBIT R1(E) | COPY OF THE TAX RECEIPT DATED 1/10/2011 |
| EXHIBIT R1(F) | COPY OF THE TAX RECEIPT DATED 7/2/2011 |
| EXHIBIT R1(G) | COPY OF THE TAX RECEIPT DATED 15/2/2007 |
| EXHIBIT R1(H) | COPY OF THE TAX RECEIPT DATED 22/4/2004 |
| EXHIBIT R1(I) | COPY OF THE TAX RECEIPT DATED 7/4/2003 |
| EXHIBIT R1(J) | COPY OF THE TAX RECEIPT DATED 6/4/2002 |
| EXHIBIT R1(K) | COPY OF THE TAX RECEIPT DATED 23/2/1999 |
| EXHIBIT R1(L) | COPY OF THE TAX RECEIPT DATED 31/1/90 |
| EXHIBIT R1(M) | COPY OF THE TAX RECEIPT DATED 10/3/1998 |
| EXHIBIT R1(N) | COPY OF THE TAX RECEIPT DATED 26/2/1996 |
| EXHIBIT R1(O) | COPY OF THE TAX RECEIPT DATED 19/2/1991 |
| EXHIBIT R1(P) | COPY OF THE TAX RECEIPT DATED 25/2/1988 |
| EXHIBIT R1(Q) | COPY OF THE POSSESSION CERTIFICATE DATED 8/2/2013 ISSUED IN MY FAVOUR OF THE 2ND RESPONDENT |
| EXHIBIT R1(R) | COPY OF THE LAND TAX DATED 16/5/2001 |
| EXHIBIT R1(S) | COPY OF THE TAX RECEIPT DATED 3/6/2005 |
| EXHIBIT R1(T) | COPY OF THE TAX RECEIPT DATED 15/6/2006. |
| EXHIBIT R1(U) | COPY OF THE TAX RECEIPT DATED 9/7/2007 |

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| **EXHIBIT R1(V)** | **COPY OF THE TAX RECEIPT DATED 24/4/2009** |
| **EXHIBIT R1(W)** | **COPY OF THE TAX RECEIPT DATED 3/1/2013** |
| **EXHIBIT R1(X)** | **COPY OF THE TAX RECEIPT DATED 21/4/2015.** |

**/TRUE COPY/**

**P.A.TO JUDGE**

**sts**

**K. ABRAHAM MATHEW, J.**

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**O.P.(C)No.2451 of 2015**

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**Dated this the 14th day of December, 2015**

**J U D G M E N T**

Petitioner is the sole defendant in O.S.145 of 2013 of Munsiff Court, Alathur. The respondents are the plaintiffs. The parties are brothers. The main relief prayed for in the suit is perpetual injunction prohibiting trespass. The respondents claim that the property originally belonged to the father of the parties and they are co-owners. The learned Munsiff granted injunction. This has been confirmed by the appellate court. This is challenged.

2. Heard.

3. The petitioner has produced some documents showing that he used to pay basic tax for the properties for a long period, but no such documents has been produced by the respondents. The respondents have produced some documents in this court. But the resurvey number given in those documents is different. The property of the father of the parties were covered by a settlement deed of 1958 executed in favour of the respondents and two other brothers. Thereafter, their father executed an assignment

deed in 1961. The property was taken back by two of his sons. Now there is another suit OS.483 of 2011 pending in civil court between the brothers for partition. The description in Ext.P14 plaint in OS.483 of 2011 and in Ext.P16 reconveyance deed of 1967 and in the present suit seems to be the same. It appears that there is some confusion with regard to the title to the properties. In these circumstances, it is only property that a receiver is appointed for the plaint schedule property. Having regard to the facts of the case, I think the petitioner may be appointed receiver. He shall not alienate the property. He shall manage it as a prudent man. He shall submit his report every six months before the trial court.

In the result, this OP is disposed of as follows:

The impugned judgment of the appellate court and the order of the trial court are set aside. The petitioner is appointed receiver of the plaint schedule property. He shall not alienate the property or part with its possession. Though he can effect improvements, he is not entitled to any special right because of the improvements. If he wants to cut down any trees or to make new improvements in the properties, he shall obtain permission from the trial court. If the suit happens to be decreed in favour of the respondents the petitioner will be entitled to the expenses he has met for effecting the improvements provided he submits true accounts before the trial court for the expenses. All other activities of the petitioner will be subject to further orders of the trial court.

sd/-
**K. ABRAHAM MATHEW**
**JUDGE**

R.AV

//True Copy//

PA to Judge