

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

OP(C).No. 2839 of 2015 (O)

I.A. NO.472/2015 IN O.S. NO.32/2014 OF MUNSIF COURT, PERUMBAVOOR.
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PETITIONER/PLAINTIFF :

**ANNIE RAJU, W/O. RAJU,
AGED 54 YEARS, PARVELIKKUDY HOUSE,
IRINGOLE KARA, PERUMBAVOOR-693 542.**

BY ADV. SRI.PAUL K.VARGHESE.

RESPONDENTS/DEFENDANTS :

- 1. STATE OF KERALA,
REPRESENTED BY DISTRICT COLLECTOR,
CIVIL STATION, KAKKANAD-682 030.**
- 2. SECRETARY,
PERUMBAVOOR MUNICIPALITY,
PERUMBAVOOR-683 542.**
- 3. PERUMBAVOOR MUNICIPALITY,
PERUMBAVOOR, REPRESENTED BY ITS SECRETARY,
PERUMBAVOOR-683 542.**

R2 & R3 BY ADV. SRI.V.M.KURIAN, SC.

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 2839 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 : A COPY OF THE PLAINT IN OS NO.32/2014 ON THE FILE OF MUNSIFF COURT, PERUMBAVOOR, DTD. 17.01.2014.**
- P2 : A COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST DEFENDANT DATED 23.02.2015.**
- P3 : A COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND AND 3RD DEFENDANTS DTD. 21.10.2014.**
- P4 : A COPY OF THE COMMISSION APPLICATION AS IA. NO.472/2015 FILED BEFORE THE MUNSIFF COURT, PERUMBAVOOR, DTD. 07.02.2015.**
- P5 : A COPY OF THE ORDER IN IA. NO.472/15 IN OS NO.32/2014 OF THE MUNSIFF COURT, PERUMBAVOOR, DATED 14.10.2015.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

K.ABRAHAM MATHEW J.

O.P.(C) No.2839 of 2015

Dated this the 24th day of November, 2015

JUDGMENT

Petitioner is the plaintiff in O.S.32 of 2014 on the file of Munsiff, Perumbavoor. The suit is for a declaration that the petitioner has acquired title to the plaint B schedule property by adverse possession and limitation and for a perpetual injunction prohibiting the respondents from trespassing into plaint A and B schedule properties. The petitioner filed an application to depute a commissioner to measure the properties on the basis of survey plan. By Ext.P5 order the learned Munsiff has dismissed it. This is challenged.

2. Heard.

3. It is now well settled that a suit for declaration that the plaintiff has acquired title to a property by adverse possession is not maintainable. The second prayer for injunction is an independent relief. So the suit is maintainable. Now the question is whether it is necessary to measure the properties on the basis of survey plan. Ordinarily, in a suit for injunction only possession is relevant. If the plaintiff proves that

he is in possession of the property and it can be identified by boundaries, he is entitled to an injunction. His title is irrelevant. So it is not at all necessary to measure the property on the basis of survey plan. I do not find any illegality or irregularity in the impugned order.

In the result, this O.P is dismissed.

K.ABRAHAM MATHEW
JUDGE

pm