

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

OP(C).No. 2085 of 2014 (O)

(I.A.NO.1041/2014 IN O.S.NO.342/2013 OF MUNSIFF COURT, PERUMBAVOOR)

PETITIONER(S)/DEFENDANTS:

- 1. C.C. JAMES, AGED 48 YEARS,S/O CHACKO,
CHIRACKAL HOUSE, MUDAKKUZHA HOUSE,
VENGOOR WEST VILLAGE.**
- 2. SALI JAMES, AGED 40 YEARS, W/O.C.C.JAMES,
CHIRACKAL HOUSE, MUDAKKUZHA KARA,
VENGOOR WEST VILLAGE.**

BY ADV. SRI.G.KRISHNAKUMAR

RESPONDENT/PLAINTIFF:

**C.C. JOY,AGED 58 YEARS, S/O CHACKO,
CHIRACKAL HOUSE, MUDAKKUZHA KARA,
VENGOOR WEST VILLAGE-683 546.**

BY ADV. SRI.T.K.SAJEEV

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 2085 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 COPY OF THE PLAINT IN O.S.NO.342/2013 ON THE FILE OF MUNSIFF COURT,PERUMBAVOOR
- EXT.P2 COPY OF THE WRITTEN STATEMENT FILED IN O.S.342/2013
- EXT.P3(A) COPY OF THE COMMISSION REPORT FILED AS PER ORDER IN I.A.1855/2013 IN O.S.342/13 ON THE FILE OF MUNSIFF COURT,PERUMBAVOOR
- EXT.P3(B) COPY OF THE COMMISSION REPORT FILED AS PER ORDER IN I.A.1968/2013 IN O.S.342/13 ON THE FILE OF THE MUNSIFF COURT,PERUMBAVOOR
- EXT.P4 COPY OF THE I.A.NO.1041/2014 FILED BY THE RESPONDENTS IN O.S.342/2013 ON THE FILE OF THE MUNSIFF COURT,PERUMBAVOOR
- EXT.P5 COPY OF THE COUNTER AFFIDAVIT IN EXHIBIT P4
- EXT.P6 COPY OF THE ORDER DATED 09.07.2014 IN I.A.NO.1041/2014 IN O.S.342/2013 OF THE FILE OF MUNSIFF COURT,PERUMBAVOOR.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

B.KEMAL PASHA, J.

.....
O.P.(C) No.2085 of 2014
.....

Dated this the 3rd day of June, 2015

J U D G M E N T

Ext.P6 order is under challenge. The plaintiff, who is the respondent herein, has filed Ext.P4 IA 1041/2014 before the court below in OS 342/2013. The suit is one claiming a right of easement by grant. It seems that after hearing both sides, the court below has passed Ext.P6 order on the commission application.

2. The main objection forwarded by the petitioners before the court below is that the property involved in OS 2/2007 of the Munsiff's Court, Perumbavur has no connection with the subject matter of this suit and therefore, item No.1 to be determined in Ext.P4 ought not to have

been allowed to be determined. The learned counsel for the respondent herein points out that item No.1 in IA 1041/2014 can be modified by making it clear that the plaint 'A' schedule property has to be measured out on the basis of the document, survey plan, as well as the description noted in the plaint. The Commissioner need not consider the decree in OS 2/2007 for the measurement of plaint A schedule property. The court below shall give such a direction to the Commissioner. Apart from such modification, Ext.P6 does not call for any further interference at all.

In the result, this Original Petition is disposed of accordingly.

Sd/-
B.KEMAL PASHA, JUDGE

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// True Copy //

PA to Judge