

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

OP(C).No. 2177 of 2014 (O)

I.A.NO.240/2013 IN O.S.NO.50/2012 OF MUNSIFF'S COURT, IDUKKI

PETITIONER(S)/DEFENDANTS:

- 1. NARAYANANKUTTY, AGED 67 YEARS,
S/O.KUNJAPPY, THADATHIL HOUSE, PAZHAYARIKANDOM KARA,
KANJIKUZHI VILLAGE, THODUPUZHA TALUK.**
- 2. THANKA, AGED 63 YEARS,
W/O.NARAYANANKUTTY, THADATHIL HOUSE,
PAZHAYARIKANDOM KARA, KANJIKUZHI VILLAGE,
THODUPUZHA TALUK.**
- 3. AJAYAN, AGED 33 YEARS,
S/O.NARAYANANKUTTY, THADATHIL HOUSE,
PAZHAYARIKANDOM KARA, KANJIKUZHI VILLAGE,
THODUPUZHA TALUK.**

**BY ADVS.SRI.N.RATHEESH
SMT.SUMA RATHEESH**

RESPONDENT(S)/PLAINTIFF :

**KAUSALLIA, AGED ABOUT 55 YEARS,
D/O. KALLIANI, KULAMATTATHIL HOUSE, PAZHAYARIKANDOM,
RESIDING AT KIZHAKKEL HOUSE, THATTEKANNI KARA,
KANJIKUZHY VILLAGE, THODUPUZHA TALUK,
IDUKKI DISTRICT-685 584.**

**BY ADVS. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PLAINT DATED 07-07-2012 IN O.S. NO. 50/2012 OF THE MUNSIFF'S COURT, IDUKKI.**
- P2: TRUE COPY OF THE WRITTEN STATEMENT DATED 28-10-2012 IN O.S NO. 50/2012 OF THE MUNSIFF'S COURT, IDUKKI.**
- P3: TRUE COPY OF THE COMMISSION REPORT IN O.S. NO. 50/2012 OF THE MUNSIFF'S COURT, IDUKKI.**
- P4: TRUE COPY OF THE COMMISSION APPLICATION, I.A. NO.240/2013 DATED 27-05-2013 IN O.S.NO.50/2012 OF THE MUNSIFF'S COURT, IDUKKI.**
- P5: TRUE COPY OF THE COUNTER AFFIDAVIT DATED 10-06-2013 IN EXT.P4 APPLICATION.**
- P6: TRUE COPY OF THE ORDER DATED 31-10-2013 IN EXT.P4 APPLICATION.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

.....
O.P.(C) No.2177 of 2014
.....

Dated this the 29th day of May, 2015

J U D G M E N T

The plaintiff has applied for appointment of a Commissioner with the assistance of a Taluk Surveyor for preparing the plan and report in respect of the plaint schedule property in O.S.No.51/2012, through IA No.241/2013. The suit is one for declaration of title and recovery of possession. The plaintiff has claimed that she is having two acres of property in her possession and she is entitled to possessory title over the property. As she is forcibly ousted from the property, she has sought for declaration of her title over the property and also sought for recovery of possession of the property. The four boundaries

of the property are also shown in the plaint. The Survey number is noted as 61/1 of Kanjikuzhy Village in Thodupuzha Taluk(presently Idukki Taluk).

2. The application was strongly resisted by the defendant, who is the petitioner herein. He contended that there is no such property as the one claimed by the plaintiff. Such a property is not at all identifiable and that the defendant is in possession of his property as a single holding. The court below has allowed the IA through Ext.P6 order, which is under challenge in this O.P.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent. The apprehension on the part of the respondent is that the petitioner is attempting to cook up evidence by attempting to grab materials by way of evidence through the appointment of a Commissioner. According to the learned counsel for the petitioner, the suit itself is not maintainable and as such the court below ought not to have appointed a Commissioner

through Ext.P6 order.

4. It seems that the question of maintainability has not been taken up for consideration by the court below in the suit. When it is a suit for recovery of possession also, along with a relief for declaration of possessory title, it goes without saying that a decree cannot be passed without a Commissioner's plan and report appended with the decree. The question, whether she is entitled to declaration and recovery of possession as prayed for, is another aspect, which has to be decided on merits. Another objection raised by the learned counsel for the petitioner is that the property cannot be identified and a proper survey is impossible even based on the pleadings of the plaintiff. Let the Commissioner visit the property and report the true state of affairs. If the Commissioner and Surveyor are unable to identify the property and to carry out the measurement, let them report the matter before the court below. According to the learned counsel for the respondent, the property can be

identified based on the survey number as well as the boundaries noted in the plaint. Let that exercise be done by the Commissioner and Surveyor and file a proper report in the matter. Presently, Ext.P6 order is not liable to be interfered with.

In the result, this Original Petition is dismissed with the aforesaid observations.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge