

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C).No. 2226 of 2014 (O)

I.A. NO. 5058/2012 IN OS.NO. 1226/2011 OF ADDL.MUNSIFF COURT-II, NEYYATTINKARA

PETITIONER(S) :

1. ARYASHERI MADAM
SRI. MANI BHADRAN SWAMI TEMPLE
REPRESENTED BY ITS THANTHRI V. NARAYANARU ALIAS NARAYANAN POTTY
S/O. VASUDEVARU, RESIDING AT SANTHI MADAM, KOVILVATTOM
PACODE P.O., KANYAKUMARI DISTRICT. TAMIL NADU.
2. V. NARAYANARU @ NARAYANAN POTTY,
S/O. VASUDEVAN, HINDU, AGED 73 YEARS
RESIDING AT SANTHI MADAM, KOVILVATTOM
PACODE P.O., KANYAKUMARI DISTRICT, TAMIL NDU.

BY ADV. SRI. M. BALAGOVINDAN

RESPONDENT(S) :

1. GOVERNMENT OF KERALA
REPRESENTED BY DISTRICT COLLECTOR, COLLECTORATE
KUDAPPANAKKUNNU, TRIVANDRUM-695001.
2. THASILDAR AND EXECUTIVE MAGISTRATE,
OFFICE OF THE THASILDAR, NEYYATTINKARA-695121.
3. ASSISTANT DIRECTOR,
RE-SURVEY SECTION, MINI CIVIL STATION
NEYYATTINKARA-695121.
4. VILLAGE OFFICER,
OFFICE OF THE VILLAGE OFFICER,
PARASSALA-695502.
5. AMOSE ALIAS RAMACHANDRAN,
S/O. JAPA PILLA, THEKKEPAROOR VILAKAM
R.C. CHURCH NADA, MURIYANKARA, PARASSALA-695502.

R1 TO R4 BY GOVT. PLEADER SRI. REJI JOSEPH
R5 BY ADV. SRI.B.PREMNATH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

OP(C).No. 2226 of 2014 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXT. P1. TRUE COPY OF THE PLAINT IN O.S. 1226/2011.

EXT. P2. TRUE COPY OF THE IMPEADING PETITION.

EXT. P3. TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER.

EXT. P4. TRUE COPY OF THE ORDER IN I.A. 5058/2012 IN O.S. 1226/2011 OF THE
ADDITIONAL MUNSIFF COURT-II, NEYYATTINKARA.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

B.KEMAL PASHA, J.

.....
O.P.(C) No.2226 of 2014
.....

Dated this the 28th day of May, 2015

J U D G M E N T

It seems that a suit has been filed under Section 14 of the Kerala Survey and Boundaries Act, 1961 challenging the re-survey carried out. The only persons originally impleaded in the suit were the governmental authorities as defendants 1 to 4. The 5th respondent herein has sought for getting him impleaded in the suit as additional 5th defendant under Order I Rule 10(2) of the Code of Civil Procedure, 1908, by contending that in case of any modification in the survey, his interest over his property would be adversely affected and therefore, he was also a necessary party to the suit. Through Ext.P4 order the court below allowed

I.A.No.5058/2012 preferred by the 5th respondent herein.

The same is under challenge.

2. Heard the learned counsel for the petitioner, the learned Government Pleader and the learned counsel for the 5th respondent.

3. According to the learned counsel for the petitioner, when a suit is filed under Section 14 of the Kerala Survey and Boundaries Act, 1961, as per Section 14(2) of the said Act, it is the prerogative of the plaintiff to decide as to who should be joined as the parties in the suit. As per sub-section(2) of Section 14 of the said Act, in any suit under sub-section (1), the plaintiff shall join as parties to the suit all persons whom he has reason to believe to be interested in the boundary which is the subject to the suit. The said provision is an enabling provision compelling the plaintiff to implead all those persons whom he has reason to believe to be interested in the boundary of the property. According to the 5th respondent herein, he was deliberately

excluded by the plaintiff when the suit was filed and in case of any change of boundary of the property, the interest of the 5th respondent would be adversely affected. When the 5th respondent has got a case that he would be adversely affected in case of any change of boundary to the property being claimed by the petitioner herein, no doubt, the 5th respondent is also a necessary party to the suit. It cannot be said that in such case he should prefer another suit. I do not find any irregularity, illegality or jurisdictional error in Ext.P4 order passed by the court below. The court below shall dispose of the suit, quite untrammelled by any of the observations made by the court below in Ext.P4 order.

With the above observation, this original petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge