

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

OP(C).No. 2324 of 2014 (O)

IA NO. 3888/2014 IN OS.NO.960/2011 OF MUNSIF COURT, NEYYATTINKARA

PETITIONER/2ND PLAINTIFF :

PRASOBHA S.,
D/O. SAVITHRI, AGED 49 YEARS
'LOTUS VILLA', EDATHINGAL VILAKAM
VELLARADA VILLAGE, VELLARADA P.O.,
NEYYATTINKARA TALUK
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.O.V.MANIPRASAD
SRI.JOLLY GEORGE

RESPONDENTS/DEFENDANTS :

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1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR
THIRUVANANTHAPURAM-695 001.
 2. THE TAHSILDAR
NEYYATTINKARA TALUK,
NEYYATTINKARA-695 012.
 3. THE VILLAGE OFFICER
VELLARADA VILLAGE, VELLARADA P.O.,
NEYYATTINKARA TALUK
THIRUVANANTHAPURAM DISTRICT-695 505.
 4. VILASINI
D/O. KAMALAMMA,
KOTTAYIL VEEDU, VELLARADA DESOM
VELLARADA P.O., THIRUVANANTHAPURAM DISTRICT-695 505.
 5. SACHIDANANDAN
S/O. SOMAN PANICKER, IN -DO- -DO-
 6. RAJESWARI
D/O. VILASINI, IN -DO- -DO-

7. BIMI

D/O. VILASINI, IN -DO- -DO-

8. RAMA BHADRAN

HUSBAND OF RAJESWARI, IN -DO- -DO-\

R1 TO R3 BY GOVT. PLEADER SRI. REJI JOSEPH

R4 TO R7 BY ADV. SRI.R.GOPAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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...3/-

OP(C).No. 2324 of 2014 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 : COPY OF THE PLAINT IN OS NO.960/11 ON THE FILE OF THE MUNSIF'S COURT, NEYYATTINKARA.
- EXT. P2 : COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS 4 TO 7/DEFENDANTS 4 TO 7 IN THE OS NO.960/11.
- EXT. P3 : COPY OF THE COMMISSION APPLICATION DTD.16.6.14 FILED BY THE PETITIONERS/PLAINTIFFS AS IA NO.3284/14 IN OS NO.960/2011.
- EXT. P4 : COPY OF THE OBJECTION FILED BY THE RESPONDENT NO.4/DEFENDANT NO.4 AGAINST EXT.P3 COMMISSION APPLICATION FILED BY THE PETITIONERS/PLAINTIFFS.
- EXT. P5 : COPY OF THE COMMISSION APPLICATION FILED BY THE RESPONDENTS 4 TO 7/DEFENDANTS 4 TO 7 AS IA NO.3888/14 IN OS NO.960/11.
- EXT. P6 : COPY OF THE OBJECTION FILED BY THE PETITIONER/PLAINTIFFS AGAINST EXT.P5 COMMISSION APPLICATION FILED BY THE RESPONDENTS 4 TO 7/DEFENDANTS 4 TO 7.
- EXT. P7 : COPY OF THE JUDGMENT IN OS NO.351/93 ON THE FILE OF THE SUB COURT, NEYYATTINKARA.
- EXT. P8 : COPY OF THE JUDGMENT DTD.13.10.03 IN AS NO.176/97 IN OS NO.351/93, PASSED BY THE 2ND ADDL.DISTRICT JUDGE, THIRUVANANTHAPURAM.
- EXT. P9 : COPY OF THE JUDGMENT DTD.15.7.05 IN RSA NO.1075/2004 IN AS NO.176/97 IN OS NO.351/93, PASSED BY THE HON'BLE HIGH COURT OF KERALA.
- EXT. P10: COPY OF THE COMMON ORDER DTD.14.8.14 IN IA NO.3284/14 AND IA NO.3888/14 IN OS NO.960/11 ON THE FILE OF THE PRINCIPAL MUNSIF COURT, NEYYATTINKARA.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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B. KEMAL PASHA, J.

.....
O.P.(C) No.2324 of 2014
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Dated this the 4th day of August, 2015

J U D G M E N T

Two Commission applications were filed; one by the plaintiff and the other by the defendants. It seems that the court below, through Ext.P10, has allowed both the Commission applications and a Commissioner was appointed with the assistance of a Surveyor. Ext.P5 application is one filed by the defendants. The defendants wanted to get six matters ascertained by the Commissioner. Item No.5 is to the effect that the property has to be surveyed by the Commissioner with the aid of the plan produced in O.S.No.351/1993. The said suit filed by the defendants herein as plaintiffs, on the basis of sale deed No.305/1980, was dismissed.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents. According to the petitioner, the attempt of the defendants through Ext.P5 is to reopen the issues involved in O.S.No.351/1993.

3. On hearing either side, this Court is satisfied that the Commissioner shall not consider Item No.5 noted in Ext.P5, while executing the Commission order. Ext.P10 order is modified to that effect. The Commissioner shall not rely on the plan produced by the Commissioner in O.S.No.351/1993 for executing the order. Item No.5 contained in Ext.P5 Commission Application need not be ascertained. With regard to all other matters, no other modification is required in Ext.P10 order.

With the said observations, this Original Petition stands allowed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge