

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. 2427 of 2014 (O)

IA NO 1399/2014 IN OS NO. 442/2012 F MUNSIFF COURT, KAYAMKULAM

ORIGINAL PETITIONERS/COUNTER PETITIONERS/PLAINTIFFS :

-
- 1. ARYA DEVI**
KARUKIZHAKKATHIL, EREZHA MURI, PERINGALA VILLAGE,
 - 2. NISHA SOMAN**
KARUKIZHAKKATHIL, EREZHA MURI, PERINGALA VILLAGE,
- BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)**
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR

RESPONDENT/PETITIONER/1ST DEFENDANT :

SANTHAKUMARI AMMA
AAYIRUMUTTATHU HOUSE, KARAKKADU MURI
MULAKKUZHA VILLAGE, CHENGANNUR TALUK-689 505.

R1 BY ADVS. SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN

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

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF PLAINT IN O.S.NO.442/2012 ON THE FILE OF THE MUNSIFF COURT, KAYAMKULAM.
- P2: A TRUE COPY OF WRITTEN STATEMENT TO THE COUNTER CLAIM.
- P3: A TRUE COPY OF WRITTEN STATEMENT TO THE COUNTER CLAIM FILED BY THE PLAINTIFFS.
- P4: A TRUE COPY OF ORDER NO.A5 9977/2010 DATED 14.07.2011 BY THE 3RD DEFENDANT PRODUCED ALONG WITH THE SUIT.
- P5: A TRUE COPY OF ORDER NO.PVAG-3602/2012 DATED 12.10.2012 BY THE RDO, CHENGANNUR PRODUCED ALONG WITH THE SUIT.
- P6: A TRUE COPY OF ORDER DATED 10.04.2013 IN IA NO.3131/12.
- P7: A TRUE COPY OF REPORT, MAHAZAR AND ROUGH SKETCH PREPARED BY THE COMMISSIONER.
- P8: A TRUE COPY OF JUDGEMENT DATED 29.11.2013 IN W.P[C]NO.29439/13 OF THIS HONOURABLE COURT.
- P9: A TRUE COPY OF IA NO.1385/14 IN OS NO.442/12.
- P10: A TRUE COPY OF IA NO.1384/14 IN OS NO.442/12.
- P11: A TRUE COPY OF IA NO.1399/14 IN OS 442/12.
- P12: A TRUE COPY OF OBJECTION TO EXT.P11.
- P13: A TRUE COPY OF ORDER DATED 27.09.2014 IN IA NO.1399/14.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
O.P.(C) No.2427 of 2014
.....

Dated this the 4th day of August, 2015

J U D G M E N T

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Ext.P13 order by which a Commissioner and Surveyor have been appointed by the court below on IA No.1399/2014 filed by the respondent is under challenge. The parties have been fighting tooth and nail, in fact, almost in respect of the very same property. There was longstanding dispute with regard to mutation also. In the meantime, Ext.P11 application was filed by the respondent herein for the appointment of a Commissioner with the aid of a Surveyor for measuring out the property on the basis of the survey plan as well as re-survey plan. Ext.P12 detailed counter has been filed by the petitioners. The petitioners have contended that it would be an idle exercise in case the

property is not measured out on the basis of the earlier title deeds. Inter alia, several other objections have also been raised.

2. The court below has passed Ext.P13 order as follows:-

“IA allowed. Deposit Surveyor Batta and Commission Batta within 15 days.”

3. It seems that the court below has not adverted to or addressed the contentions of rival sides. The plea taken up by the respondent has not been adverted to or addressed. Similarly, the detailed objections taken up by the petitioners have also not been adverted to. The court below ought to have passed a speaking order when there was serious dispute between the parties even with regard to the appointment of a Commissioner. Matters being so, the impugned order is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Ext.P13 is set aside. The matter is remitted to the court below for fresh

disposal in accordance with law, after hearing the parties.

The court below shall dispose of the I.A, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/04/08

// True Copy //

PA to Judge