

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

OP(C).No. 2919 of 2014 (O)

(IA.NO.2611/2014 IN OS.NO. 6/2010 OF MUNSIFF COURT, PUNALUR
DATED 19-11-2014)

PETITIONER :

SALIM.C.S., AGED 56 YEARS,
S/O.SULIAMAN RAWTHER, SHAMEER MANZIL, MANGODU,
PATHIRIKKAL MURI, PATHANAPURAM VILLAGE,
PATHANAPURAM TALUK.

BY ADVS.SRI.M.S.UNNIKRISHNAN
SMT.JAYASREE MANOJ

RESPONDENT(S):

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1. SUBAIDA BEEVI, AGED 49 YEARS,
D/O.MOHAMMED BEEVI, MELETHIL VEEDU,
NEDUMPARAMBU MELETHIL VEEDU, PATHIRAKKAL MURI,
PATHANAPURAM VILLAGE, PATHANAPURAM TALUK, PIN-691 508.
 2. UMMER KASIM, AGED 60 YEARS,
NEDUMPARAMBU MELETHIL VEEDU, PATHIRIKKAL MURI,
PATHANAPURAM VILLAGE, PATHANAPURAM TALUK, PIN-691 508.

R1 & R2 BY ADV. SRI.ESM.KABEER

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 2919 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE PLAINT IN O.S.NO.6 OF 2010 ON THE FILES OF MUNSIFF'S COURT, PUNALUR.
- P2: COPY OF THE DEHANNA VILAYADHARAM EXECUTED BY THE FATHER IN LAW OF THE PETITIONER.
- P3: COPY OF THE SETTLEMENT DEED NO.1437 OF 1990 OF SRO, PATHANAPURAM.
- P4: COPY OF THE WRITTEN STATEMENT IN O.S.NO.6 OF 2010 ON THE FILES OF MUNSIFF'S COURT, PUNALUR.
- P5: COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER TO THE WRITTEN STATEMENT IN O.S.NO. 6 OF 2010 ON THE FILES OF MUNSIFF'S COURT, PUNALUR.
- P6: COPY OF THE COMMISSION REPORT AND PLAN IN O.S.NO.6 OF 2010 ON THE FILES OF MUNSIFF'S COURT, PUNALUR.
- P7: COPY OF THE PETITION SUBMITTED BY THE PETITIONERS HEREIN, NUMBERED AS I.A.NO.2611/2014 IN O.S.NO.6 OF 2010.
- P8: COPY OF THE COUNTER OBJECTION FILED BY THE RESPONDENT.
- P9: COPY OF THE ORDER DATED 19.11.2014 IN I.A.NO.2611/2014 IN O.S.NO.6/2010.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

B. KEMAL PASHA, J.

.....
O.P.(C) No.2919 of 2014
.....

Dated this the 8th day of July, 2015

J U D G M E N T

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The plaintiffs claim an extent of 15.5 cents of property through an unregistered document, which is seriously challenged by the defendants. In the plaint, the tenure of the property is shown as '*puthuval land*' in the possession of the plaintiffs, situated in survey No.335/1/903 having an extent of 15.5 cents. The defendants have set up a counter claim in Ext.P4 written statement, thereby seeking a decree of perpetual injunction from trespass, etc. Ext.P5 reply to the counter claim was also filed. Thereafter, a Commission was taken out with the assistance of a Surveyor. The Commissioner has filed Ext.P6 Commissioner's report in which a plan is also appended with.

2. On the basis of the Commissioner's report, the

plaintiffs have filed Ext.P7 IA seeking some minor amendments and also some amendments to be incorporated in the plaint schedule for the removal of the term '*puthuval*' from the tenure of the property and the substitution of the survey number as 363/4AB instead of 335/1/903. Ext.P8 counter was filed. Apart from contending that the amendments sought for are contradictory to the contents of the documents being relied on by the plaintiffs, no other objection has been taken up. It seems that the court below, through Ext.P9 order, has dismissed the IA. The said order is under challenge.

3. Heard learned counsel for the petitioner and learned counsel for the respondents.

4. It seems that the court below has dismissed the IA on the sole ground that the amendment application was one filed after the commencement of trial. It is true that issues were framed in the suit and literally in strict sense the trial has been commenced. At the same time, no evidence

has been recorded in the suit. The amendment has been necessitated because of Ext.P6 Commissioner's report and plan. Therefore, it may not be correct to say that the petitioners were aware of such amendments to be carried out at any stage prior to the filing of the Commissioner's report.

5. The contention that the amendments sought for are contradictory to the documents being relied on by the plaintiffs is a matter relating to the merits of the matter. The respondents can raise the question of maintainability of the suit before the court below and in such case, the court below shall decide the said question as a preliminary issue, in case it is a question of law and not a mixed question of law and facts. Ext.P9 order is liable to be set aside.

In the result, O.P.(Civil) is allowed and Ext.P9 order stands set aside. Ext.P7 IA stands allowed. The petitioner shall be permitted to carry out the amendments. The respondents shall be given an opportunity to file an

additional written statement. If so advised, the respondents can raise the question of maintainability of the suit before the court below and in case, it is a question of law and not a mixed question of law and facts, the court below shall consider the same as a preliminary issue.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/08/07

// True Copy //

PA to Judge