

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

OP(C).No. 2966 of 2014 (O)

AGAINST ORDER IN I.A.NO.2387 OF 2013 IN O.S.NO.45 OF 2012 OF ADDITIONAL MUNSIFF
COURT, KOLLAM.

PETITIONER(S):

REV.FR.JAMES PUTHENPURA, AGED 73 YEARS,
S/O.MATHAI, FORMER VICAR ST.ANTONY'S CHURCH
KANJIRAKODE MURI, MULAVANA VILLAGE, KOLLAM TALUK
KOLLAM DISTRICT-691501.

BY ADVS.SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY

RESPONDENT(S):

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1. REV.FR.JOLLY JOSEPH, AGED 47 YEARS
SON OF JOSEPH, RESIDING AT ROSE DALE, KANJIRAKODE MURI
MULAVANA VILLAGE, KOLLAM TALUK
KOLLAM DISTRICT - 691 501.
 2. J.JAYAN, AGED 36 YEARS
SON OF JOSEPH, KSEB EMPLOYEE, RESIDING AT ROSE DALE
KANJIRAKODE MURI, MULAVANA VILLAGE, KOLLAM TALUK
KOLLAM DISTRICT - 691 501.
 3. K.C.JOSE, AGED 61 YEARS
SON OF KUCHUKURISH, RESIDING AT KUNNUVILA VEEDU
KANJIRAKODE MURI, MULAVANA VILLAGE, KOLLAM TALUK
KOLLAM DISTRICT - 691 501 (FORMER COMMITTEE MEMBER).
 4. FULGINS, AGED 61 YEARS
SON OF MARIYAN, RESIDING AT VIRGIN DALE
PANAYAMCODE MURI, MULAVANA VILLAGE, KOLLAM TALUK
KOLLAM DISTRICT - 691 501(FORMER COMMITTEE MEMBER).
 5. PIUS, AGED 70 YEARS
SON OF ANTONY, RESIDING AT THEKKEPOIKA
CHARUVILA VEEDU, KANJIRAKODE MURI, MULAVANA VILLAGE
KOLLAM TALUK - 691 501
KOLLAM DISTRICT (FORMER COMMITTEE MEMBER).
 6. JOHNSON, AGED 51 YEARS
SON OF JOSEPH, CHAZHIKKAN RESIDING AT POOKOLY,
KANJIRAKODE MURI, MULAVANA VILLAGE, KOLLAM TALUK
KOLLAM DISTRICT - 691 501.

R3 TO R6 BY ADV. SRI.ASHOK SURESH
R1 BY FR.JOLLY JOSEPH (PARTY IN PERSON)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-01-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 2966 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. THE TRUE COPY OF THE PLAINT IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P2. THE TRUE COPY OF THE I.A.NO.304/2012 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P3. THE TRUE COPY OF THE OBJECTION FILED BY DEFENDANTS TO I.A.NO.304/2012 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P4. THE TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P5. THE TRUE COPY OF THE ORDER DATED 02.07.2014 OF DISTRICT COURT KOLLAM IN O.P(TP)46/2014.

EXHIBIT P6. THE TRUE COPY OF THE JUDGMENT DATED 16.09.2014 IN OP(C)NO.1937/2014 OF THIS COURT.

EXHIBIT P7. THE TRUE COPY OF THE REPORT FILED ADVOCATE SHANI B. DATED 01.02.2012 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P8. THE TRUE COPY OF THE REPORT IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM ALONG WITH THE SURVEY PLAN.

EXHIBIT P9. THE TRUE COPY OF THE REPORT DATED 07.07.2012 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P10. THE TRUE COPY OF THE REPORT DATED 11.02.2013 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P11. THE TRUE COPY OF THE REPORT OF ADVOCATE K.JAYAN DATED 16.03.2013 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P12. THE TRUE COPY OF THE COMMISSION APPLICATION NO.I.A.NO.2387/2013 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

EXHIBIT P13. THE TRUE COPY OF THE OBJECTION DATED 19.12.2013 FILED ON BEHALF OF THE DEFENDANTS

EXHIBIT P14. THE TRUE COPY OF THE ORDER DATED 29.11.2014 IN I.A.NO.2387/2013 IN O.S.NO.45/2012 OF THE ADDL. MUNSIFF COURT, KOLLAM.

RESPONDENT(S)' EXHIBITS

EXT.R1(1) TRUE COPY OF INJUNCTION ORDER IN IA NO.304/2012

OP(C).No. 2966 of 2014 (O)

EXT.R1(2) TRUE COPY OF GENTLEMAN AGREEMENT BETWEEN THE PETITIONER AND THE RESPONDENTS 1 AND 2

EXT.R1(3) LETTER OF BISHOP OF KOLLAM DATED 6.12.2012 TO THE PETITIONER TO SELL CHURCH LAND ONLY TO 2ND RESPONDENT

EXT.R1(4) TRUE COPY OF DOCUMENT FROM REVENUE DEPARTMENT DATED 22.01.2013 SHOWS THAT THE PETITIONER IS NOT THE OWNER OF B SCHEDULE PATH WAY OF RESPONDENTS 1 AND 2

EXT.R1(5) TRUE COPY OF PROSECUTION IA NO.4784/2012 FILED BY RESPONDENTS 1 AND 2 AGAINST THE PETITIONER HEREIN

EXT.R1(6) TRUE COPY OF IA NO.3322/2013 FILED BY RESPONDENTS 1 AND 2 FOR THE ENFORCEMENT OF INJUNCTION ORDER

EXT.R1(7) TRUE COPY OF THE STAY ORDER IN OP(C) NO.2966/2014

EXT.R1(8) TRUE COPY OF COMPLAINT OF 1ST RESPONDENT DATED 13.12.2014 AGAINST THE PETITIONER HEREIN TO HIGHER AUTHORITIES REGARDING ILLEGAL CONSTRUCTIONS IN VIOLATION OF INJUNCTION ORDER AFTER OBTAINING STAY ORDER WITH POSTAL RECEIPTS AND A/DS.

EXT.R1(9) 13 COLOUR PRINTS (PHOTOS) SHOWING ILLEGAL CONSTRUCTIONS OF THE PETITIONER DATED 17.12.2014 AND 26.12.2014

EXT.R1(10) TRUE COPY OF OBJECTION OF THE PLAINTIFFS DATED 18.2.2013 TO THE 4TH COMMISSION REPORT

EXT.R1(11) TRUE COPY OF THE ALLEGED 5TH COMMISSION REPORT DATED 16.2.2013

EXT.R1(12) TRUE COPY OF OBJECTION OF PLAINTIFFS DATED 15.07.2013 TO THE ALLEGED 5TH COMMISSION REPORT

EXT.R1(13) TRUE COPY OF JUDGMENT IN WP(C) 7172/2013 ABOUT THE ILLEGAL DISMANTLING OF ELECTRIC LINE AGAINST THE PETITIONER

EXT.R1(14) TRUE COPY OF THE ORDER OF ELECTRICITY OMBUDSMAN ABOUT THE ILLEGAL DISMANTLING OF ELECTRIC LINE BY VIOLATING THE INJUNCTION ORDER BY THE PETITIONER HEREIN

EXT.R1(15) TRUE COPY OF ADVANCE PETITION IA NO.4501/2013 FOR DISPOSING THE COMMISSION APPLICATION IA NO.2387/2013

EXT.R1(16) TRUE COPY OF ARGUMENT NOTE FOR IA NO.2387/2013

EXT.R1(17) TRUE COPY OF IA NO.1613/2013 FILED BEFORE VACATION COURT TO DISPOSE THE COMMISSION APPLICATION IA NO.2387/2013

EXT.R1(18) TRUE COPY OF PETITION DATED 6.1.2014 FOR ISSUING ORDER IN IA NO.1613/2013 BEFORE ISSUING ORDER IN COMMISSION APPLICATION IA NO.2387/2013

EXT.R1(19) TRUE COPY OF COMPLAINT OF PLAINTIFF DATED 24.12.2013 AGAINST COURT STAFF WHO MANIPULATED DOCUMENTS

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EXT.R1(20) TRUE COPY OF ARGUMENT NOTE FOR TPOP 46/2014 FILED BEFORE THE DISTRICT COURT DATED 5.4.2014

EXT.R1(21) TRUE COPY OF UNNUMBERED CMA DATED 27.5.2014 FILED BEFORE THE DISTRICT COURT AGAINST AN ORDER OF MUNSIFF COURT REGARDING THE NON-DISPOSAL OF COMMISSION APPLICATION IA NO.2387/2013

EXT.R1(22) TRUE COPY OF ORDER DATED 3.7.2014 IN UNNUMBERED CMA

EXT.R1(23) TRUE COPY OF THE LETTER OF 2ND PLAINTIFF TO GRAMA PANCHAYATH REGARDING THE ISSUE OF BUILDING PERMIT TO THE PETITIONER HEREIN

EXT.R1(24) TRUE COPY OF GRAMA PANCHAYAT DATED 8.2.2013 INDICATING NO BUILDING PERMIT DUE TO DEFECT IN THE APPLICATION OF THE DEFENDANTS

EXT.R1(25) TRUE COPY OF THE REPLY OF THE SAME GRAMA PANCHAYAT DATED 3.5.2013 TO THE 1ST PLAINTIFF GIVES A CONTRADICTIONARY STATEMENT STATING NO PERMIT GIVEN AND THE PRESENT CONSTRUCTION IS WITHOUT BUILDING PERMIT

EXT.R1(26) TRUE COPY OF THE DISTRICT TOWN PLANNING OFFICE DATED 16.4.2014 TO THE 1ST PLAINTIFF INDICATES THAT NO OBJECTION CERTIFICATE, NO LAY OUT PERMISSION AND NO OTHER BUILDING PERMIT GIVEN TO THE DEFENDANTS

EXT.R1(27) TRUE COPY OF JUDGMENT IN WP(C) 14742/2013 DATED 30.09.2013 DIRECTING THE GRAMA PANCHAYAT TO ISSUE BUILDING PERMIT TO THE DEFENDANTS ONLY AS PER LAW

EXT.R1(28) TRUE COPY OF PETITION IA NO.5653/2014 DATED 17.12.2014 FOR CHANGING THE PRESENT COURT APPOINTED COMMISSIONER FOR HER FAILURE TO SUBMIT COMMISSION REPORT ON 11.12.2014 AS DIRECTED BY THE TRIAL COURT OF KOLLAM

EXT.R1(29) ORIGINAL THREE PHOTOS OF PLAINTIFFS DATED 22.12.2013 SHOWING THE DISPUTED SCHOOL GATE OPENED FOR NON PURPOSES

EXT.R1(30) TRUE COPY OF THE FRAUDULENT COUNTER AFFIDAVIT DATED 22.7.2013 BY THE PETITIONER HEREIN IN WP(C) 4742/2013 FOR THE CONSTRUCTION OF A STORE ROOM NOW TURNED INTO THE PRESENT 3 STORIED BUILDING IN PLAINT SCHEDULE PROPERTY IN VIOLATION OF INJUNCTION ORDER

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.2966 of 2014

Dated this the 30th day of January, 2015

JUDGMENT

This original petition under Article 227 of the Constitution of India is coming up by challenging Ext.P14 order passed by the learned Additional Munsiff, Kollam on I.A.No.2387 of 2013 in O.S.No.45 of 2012. It is a suit for injunction filed by respondents 1 and 2 in this proceedings claiming a right of easement by prescription.

2. Heard the learned counsel for the petitioner and the 1st respondent, who appeared as party in person.

3. Learned counsel for the petitioner submitted that the court below allowed Ext.P12 application disregarding the principle of law that an application for issuance of another commission shall not be allowed without setting aside plan and report submitted by the previous commissioner. In answer to this argument, 1st respondent submitted that the petitioner has also applied for a fresh commission and that was allowed without setting aside the earlier commission report and plan. The above rule is subject to certain exception, like non-availability of previous commissioner, urgency in conducting inspection, etc. Whatever be the issue in that regard, it can only be mentioned here that the legal worth of the commissioner's report

and plan now sought to be produced can be decided by the court below at the time of trial. It is axiomatic that the commissioner's report is only a piece of evidence. The grievance of the 1st respondent is that he is landlocked in spite of a temporary injunction order in his favour because the petitioner is violating the order. That is not a matter to be adjudicated in this proceedings. 1st respondent, if aggrieved, can initiate appropriate proceedings before the trial court.

4. Learned counsel for the petitioner drew my attention to Ext.P12 application wherein the 1st respondent has requested for an order so that the commissioner shall conduct a local inspection and report about nine things enlisted in the application. Out of the matters enlisted, item Nos.1 to 3 and 5 are totally extraneous to the litigation is the submission of the learned counsel for the petitioner. It is also submitted by the learned counsel for the petitioner that other things now sought to be reported by the commissioner have already been covered by the earlier reports and plans. This submission is opposed by the 1st respondent. According to him, subsequent to the earlier inspection, the situation has been changed by the petitioner. It is made clear that the trial court is free to decide about the acceptability of commissioner's report and plan obtained without setting aside the earlier reports and plans. I am of the view that enlisted items 1 to 3 and 5 are irrelevant for the suit and the order passed by the trial court

can be confined in respect of item Nos. 4, 6, 7 and 8. In respect of item No. 9 also, the submission of the learned counsel for the petitioner is that all these matters have already been covered. If the parties are able to point out before the commissioner any matter relating the proper adjudication of the suit, the commissioner is free to report about the state of affairs provided they are not covered in the earlier report. I am of the view that the only way to resolve the matter is to expedite trial of the suit. It is submitted by the petitioner that the suit is almost ripe for trial. But the 1st respondent wants to amend the plaint. Considering the entire matters, I am of the view that the lower court shall dispose of the suit as expeditiously as possible, at any rate, within a period of one year.

The original petition disposed with the above observations. No order as to costs.

A. HARIPRASAD, JUDGE.

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