

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

OP(C) .No. 2968 of 2014 (O)

IN OS 95/2012 of MUNSIF COURT, KATTAPPANA

PETITIONER(S) :

KURIAN,
S/O.ANTONY, AGED 63 YEARS,
R/A.KUNNUMPURATHU HOUSE,
ANNAKKARA, ANNAKKARA VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.A.C.DEVASIA.

RESPONDENT(S) :

1. MATHUKUTTY,
AGED 47 YEARS, S/O.ANTONY,
KUNNUMPURATH HOUSE,
PRESENTLY RESIDING WITH PRAKASH MAESTRI,
THUNDIYIL HOUSE,
ANNAKKARA VILLAGE, UDUMBANCHOLA TALUK-685 508.
2. BOSE,
AGED 52 YEARS, S/O.ANTONY,
KUNNUMPURATHU HOUSE,
PRESENTLY RESIDING WITH PRAKASH MAESTRI,
THUNDIYIL HOUSE, ANNAKKARA KARA, ANNAKKARA VILLAGE,
UDUMBANCHOLA TALUK-685 508.

BY ADV. SRI.LIJI.J.VADAKEDOM.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 19-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1:- TRUE COPY OF THE PLAINT IN OS 95/2012.

EXT. P2:- TRUE COPY OF THE WRITTEN STATEMENTS IN OS 95/2012.

EXT. P3:- TRUE COPY OF THE SURVEY COMMISSION APPLICATION IN IA NO 1237/2014.

EXT. P4:- TRUE COPY OF THE OBJECTION TO THE COMMISSION APPLICATION IN IA NO 1237/2014.

EXT. P5:- TRUE COPY OF THE ORDER IN IA NO 1237/2014 IN OS NO 95/2012 DTD 26/11/2014.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

B.KEMAL PASHA, J.

.....
O.P.(C) No. 2968 of 2014
.....

Dated this the 19th day of June, 2015

J U D G M E N T

Ext.P5 order in I.A.No.1237/2014 in O.S.No.95 of 2012 of the Munsiff's Court, Kattappana is under challenge.

2. Originally, the suit was filed for perpetual injunction. Later, the suit was amended by incorporating the relief of declaration of title and recovery of possession. The defendants contended that the property is not identifiable and the plaintiff is not entitled to a decree. The plaintiff has rightly applied for the appointment of a Commissioner through I.A.No.1237/2014, with the assistance of a Surveyor.

3. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

4. In a case wherein a relief of recovery of

possession is sought for, the decree should be appended with the plan of the property to be recovered. In the absence of a survey plan, an executable decree cannot be passed. It seems that the court below has lost sight of that basic fact and has chosen to dismiss the IA through Ext.P5 order. Ext.P5 order is liable to be set aside.

In the result, this Original Petition is allowed and Ext.P5 order is set aside. I.A.No.1237 of 2014 stands allowed. The court below shall appoint a Commissioner with the assistance of a Surveyor. The petitioner shall pay the necessary batta, as may be ordered by the court below. It is open to the parties to file work memos to the Commissioner for getting further matters, if any, required to be ascertained and noted down.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge