

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

OP(C).No. 2981 of 2014 (O)

EP.NO.16/2006 IN OS.NO.224/1995 OF SUB COURT, THIRUVALLA

.....

PETITIONER(S):

PHILIPOS THOMAS, AGED 67 YEARS,
S/O.P.THOMAS (LATE), MALAYIL VEEDU, NEDUMPRAYAR MURI,
THOTTAPPUZHASSERY VILLAGE, THIRUVALLA, MARAMON P.O.,
PATHANAMTHITTA DISTRICT - 689 549.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

1. MATHEWS MATHAI,
THENGUMOTHOTTATHIL, KURIYANNOOR,
THOTTAPPUZHASSERY VILLAGE, THIRUVALLA, MARAMON P.O.,
PATHANAMTHITTA DISTRICT - 689 549.
2. ANNAMMA THOMAS,
THENGUMOTHOTTATHIL, KURIYANNOOR,
THOTTAPPUZHASSERY VILLAGE, THIRUVALLA, MARAMON P.O.,
PATHANAMTHITTA DISTRICT - 689 549.
3. MARIYAMMA THOMAS,
THENGUMOTHOTTATHIL, KURIYANNOOR,
THOTTAPPUZHASSERY VILLAGE, THIRUVALLA, MARAMON P.O.,
PATHANAMTHITTA DISTRICT - 689 549.
4. SARAMMA CHERIYAN,
THENGUMOTHOTTATHIL, KURIYANNOOR,
THOTTAPPUZHASSERY VILLAGE, THIRUVALLA, MARAMON P.O.,
PATHANAMTHITTA DISTRICT - 689 549.
5. SUSAN KARIMBIL,
THENGUMOTHOTTATHIL, KURIYANNOOR,
THOTTAPPUZHASSERY VILLAGE, THIRUVALLA, MARAMON P.O.,
PATHANAMTHITTA DISTRICT - 689 549.

msv/

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6. TOM MATHAI,
THENGU THOTTATHIL VEEDU, KURIYANNOOR MURI,
THOTTAPPUZHASSERY VILLAGE - 68660.
7. MISHAL SARA MATHAI,
THENGU THOTTATHIL VEEDU, KURIYANNOOR MURI,
THOTTAPPUZHASSERY VILLAGE - 68660.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015,
ALONG WITH OPC. 189/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

msv/

OP(C).No. 2981 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE COPY OF THE JUDGMENT IN O.S.NO. 224 OF 1995
DATED 25/07/1998 ON THE FILE OF THE SUB COURT, THIRUVALLA.**

**EXHIBIT P2: A TRUE COPY OF THE APPLICATION E P. NO. 16 OF 2006 IN O.S.NO. 224
OF 1995 DATED 14/03/2006 ON THE FILE OF THE SUB COURT,
THIRUVALLA.**

**EXHIBIT P3: A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER HEREIN IN
EXT.P2 DATED 31/10/2012.**

**EXHIBIT P4: A TRUE COPY OF THE COUNTER FILED BY THE PETITIONER IN EXT.P2
EXECUTION PETITION DATED 16/02/2013.**

**EXHIBIT P5: A TRUE COPY OF THE APPLICATION OF THE PETITIONER AS E.A.NO. 10
OF 2013 IN EXT.P2 DATED 16/02/2013 ON THE FILE OF THE SUB COURT,
THIRUVALLA.**

**EXHIBIT P6: A TRUE COPY OF THE APPLICATION OF THE PETITIONER AS E.A.NO. 8
OF 2013 DATED 16/02/2013 ON THE FILE OF THE SUB COURT,
THIRUVALLA.**

**EXHIBIT P7: A TRUE COPY OF E.A.NO. 99 OF 2012 IN EXT.P2 DATED 18/10/2012 ON
THE FILE OF THE SUB COURT, THIRUVALLA.**

**EXHIBIT P8: A TRUE COPY OF THE COMMON ORDER PASSED IN E.A.NO. 99 OF 2012,
8 OF 2013, 9 OF 2013 AND 10 OF 2013 IN EP NO. 16 OF 06 (WRONGLY
SHOWN AS E.A.NO. 16) IN O.S.NO. 224 OF 95 ON THE FILE OF THE SUB
COURT, THIRUVALLA DATED 24/11/2014.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
O.P.(C) No.2981 of 2014 &
O.P.(C) No.189 of 2015
.....

Dated this the 29th day of July, 2015

J U D G M E N T

O.S.No.224 of 1995 was filed by the respondents herein for declaration of title, recovery of possession and for injunction. The suit was decreed. Challenging the said judgment and decree, A.S.No.71 of 199 was filed before this Court. The said appeal was also dismissed and the decree has become final. The decree was put in execution.

2. In the execution, a challenge was made by the petitioner by taking up a contention that he is a cultivating tenant residing in the property and therefore, the matter has to be referred to the Land Tribunal for adjudication under Section 125(3) of the Land Reforms Act. Along with that,

another application was made thereby requesting the court below to defer the execution proceedings till a decision is taken by the Land Tribunal in the proceedings pending before the Land Tribunal. The said proceedings were initiated after the dismissal of the appeal. The court below has dismissed the IAs.

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

4. Much discussion is not required to conclude that the contentions taken up by the judgment debtor cannot stand for a moment. Even the proceedings initiated before the Land Tribunal after the dismissal of the appeal is not maintainable, as it is hit by constructive *res judicata* and the principles of *lis pendens*.

5. Regarding the reference to the Land Tribunal, it is not possible to refer such questions at this stage. When the plea was not taken up at the trial stage, the petitioner is estopped from seeking reference to the Land Tribunal, as

the said question does not arise in the execution stage. A catena of decisions on the points are cited by the learned counsel for the respondents. Matters being so, both the original petitions are devoid of merits, and are only to be dismissed, and I do so.

In the result, both these Original Petitions are dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge