

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 10066 of 2012 (G)

PETITIONER(S):

**SIVAPRASATH, AGED 40 YEARS,
S/O. BALAKRISHNAN, PARADISE HOUSE,
DOOR NO. X/525, AMARAVATHI, FORT KOCHI,
REPRESENTED BY MRS.GOURI RAO, 48/48,
MAGEERAM, JANMABHOOMI LANE, ELAMAKKARA,
KOCHI-26.**

BY ADV. SRI.N.K.MOHANLAL.

RESPONDENT(S):

- 1. TAHSILDAR, KANAYANNUR TALUK,
ERNAKULAM-682 011.**
- 2. TALUK SURVEYOR,
KANAYANNUR TALUK, ERNAKULAM-682 011.**
- 3. NIRMALA, THANNIKKAL WEST,
ELAMAKKARA. P.O., KOCHI-682 026.**
- 4. KAMALAKSHY VARADARAJ,
THANNIKKALPARAMBU, ELAMAKKARA. P.O.,
KOCHI-682 026.**
- 5. JOY, MALIAKKAL, THANNIKKAL WEST,
ELAMAKKARA. P.O., KOCHI-682 026.**

**R1 & R2 BY GOVT. PLEADER SMT.SUNITHA VINOD.
R3 BY ADVS. SRI.C.A.MAJEED,
SRI.K.H.ASIF.
R4 BY ADV. SMT.M.HEMALATHA.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 10066 of 2012 (G)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 COPY OF THE NOTICE NO.S1/10824 ISSUED BY 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:-

EXT.R4A COPY OF THE JUDGMENT DATED 18/12/2007 ION A.S. NO.369/2007.

EXT.R4B COPY OF THE COMMISSION REPORT TO EXT.C1.

EXT.R4C COPY OF THE COMMISSION REPORT AS EXT.C2.

EXT.R4D COPY OF THE PLAN AS EXT.C2(A).

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.10066 of 2012

Dated this the 5th day of February, 2015

JUDGMENT

The petitioner alleges that he is the absolute owner in possession of an extent of 26.838 cents of land comprised in Sy.No.213/1/B, 1/C in Edappally South Village as per the Partition Deed of Edappally Sub Registry Office.

2. The petitioner further alleges that there was dispute regarding the boundaries between his property and the adjacent land owners' property and therefore, he applied for measurement of the property and fixation of boundary before the second respondent. He further points out that the Taluk Surveyor issued notice to the adjacent land owners, who are respondents 3 to 5, including the petitioner for measurement of property on 6.12.2011. However, the 4th respondent objected to the measuring when the Taluk Surveyor came for measurement and therefore, he refrained from measuring the property.

3. In the counter affidavit filed by the 4th respondent, it was contended that there is no dispute regarding the boundary of the property of the petitioner and the property of the 4th respondent. According to her, she is in absolute possession and enjoyment of 38 cents of land comprised in Sy.No.211/4A/2 of Edappally South Village. When there was a threat of trespass upon her property, she has approached the Munsiff's Court. However, it was dismissed and an appeal was filed which was allowed. She alleges that the District Court, in the appeal filed by her, found that the commissioner deputed in the suit has clearly identified her property. She further points out that as per Section 6 of the Survey and Boundaries Act, when any survey is ordered under Section 4 or 5, the Survey Officer shall publish a notification in the gazette in the prescribed manner inviting all persons having any interest in the land in respect of which the survey is conducted. It was pointed out that no such notice has been given.

4. Arguments have been heard.

5. While the petitioner alleges that she is in absolute

possession and enjoyment of certain property, the 4th respondent says that she is having possession of 38 cents of property and a competent civil court has approved the identification of the property by the commissioner deputed in the suit. It is not disputed that the property of the petitioner as well as the property of the 4th respondent are lying adjacent. The petitioner wants to get the boundaries of his property as well as the adjoining properties identified and fixed by a proper measurement for which he approached the second respondent. There cannot be any dispute for getting the petitioner's property measured by a competent surveyor.

Therefore, this writ petition is disposed of directing respondents 1 and 2 to measure out the petitioner's property after issuing notice to the adjacent property owners. If the 4th respondent has any objection, it shall be open to her to approach the appellate authority as per the provisions under the Kerala Survey and Boundaries Act. This exercise shall be completed within a period of three months from the date of receipt of a copy of this

judgment. The measurement after issuing notice shall be completed within a period of three months from the date of receipt of a copy of this judgment.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE