

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 10338 of 2010 (N)

PETITIONER(S):

JINU JOSE,
AGED 30 YEARS, W/O.JOBY KURIAN, PAROKKARAN VEEDU,
KARUKUTTY P.O., MAMBRA, ERNAKULAM DISTRICT.

BY ADV. SRI.K.ABDUL JAWAD.

RESPONDENT(S):

1. DISTRICT COLLECTOR,
ERNAKULAM.
2. DIRECTOR OF SURVEY,
SURVEY DIRECTORATE, VAZHUTHACAUD, THIRUVANANTHAPURAM.
3. DEPUTY DIRECTOR OF SURVEY,
COLLECTORATE, ERNAKULAM.
4. SUPERINTENDENT,
SURVEY & LAND RECORDS (RE-SURVEY)
MINI CIVIL STATION, ALUVA, ERNAKULAM DISTRICT.
5. THAHASILDAR,
ALUVA, ERNAKULAM DISTRICT.
6. VILLAGE OFFICER,
PARAKKADAVU VILLAGE, ALUVA TALUK, ERNAKULAM DISTRICT.
7. KERALA FINANCIAL CORPORATION,
REP. BY MANAGING DIRECTOR, THIRUVANANTHAPURAM.
8. ANITHA BAIJU,
W/O.BAIJU, STHAMMANATH VEEDU, KARUKUTTY P.O.,
MAMBRA, ERNAKULAM DISTRICT.

R7 BY ADV. SRI.M.M.SAYED MUHAMMED, SC, KFC
R8 BY ADV. SRI.S.SUDHISH KUMAR
R8 BY ADV. SRI.SIBI KARUN
BY GOVERNMENT PLEADER SRI.S.JAMAL &
R7 BY SRI.T.V.GEORGE, SC, KFC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1 : TRUE COPY OF THE SALE CERTIFICATE DATED 29/05/2002 ISSUED TO THE PETITIONER.
- EXT. P2 : TRUE COPY OF LOCAL PLAN ISSUED BY THE 6TH RESPONDENT TO MR. NARAYANAN.
- EXT. P3 : TRUE COPY OF THE RE-SURVEY SKETCH OF THE LAND.
- EXT. P4 : TRUE COPY OF THE SKETCH OF MEASUREMENTS ON ALL SIDES OF THE PETITIONER'S LAND IN RE-SURVEY NO.104/25 AND 104/26.
- EXT. P5 : TRUE COPY OF THE REPRESENTATION DATED 20/08/09 TO THE 2ND RESPONDENT SUBMITTED BY THE PETITIONER.
- EXT. P6 : TRUE COPY OF THE HEARING NOTE BY THE PETITIONER DATED 11/11/2009.
- EXT. P7 : TRUE COPY OF THE ORDER IN THE FORM OF A REPORT, PASSED BY THE 3RD RESPONDENT.
- EXT. P8 : TRUE COPY OF THE COMMUNICATION DATED 06/02/2010 ISSUED BY THE 2ND RESPONDENT.
- EXT. P9 : TRUE COPY OF THE NOTICE DATED 27/08/97.
- EXT. P10 : TRUE COPY OF THE NOTICE DATED 27/08/97.
- EXT. P11 : TRUE COPY OF THE NOTICES DATED 27/08/97.
- EXT. P12 : TRUE COPY OF THE NOTICE DATED 27/08/97.
- EXT. P13 : TRUE COPY OF THE MAHAZAR PREPARED BY THE 6TH RESPONDENT.
- EXT. P14 : TRUE COPY OF THE TAX RECEIPT.
- EXT. P15 : TRUE COPY OF THE APPLICATION DATED 28/01/2011 FILED BY THE PETITIONER.
- EXT. P16 : TRUE COPY OF THE REPLY NO.RTI/2010/11/276/21-2-2011, ISSUED BY KSEB.
- EXT. P17 : TRUE COPY OF PHOTOGRAPH OF THE PORTION OF LAND.

RESPONDENT(S) ' EXHIBITS :

- EXT. R8(A) : TRUE COPY OF THE COMMISSION REPORT ALONGWITH SKETCH IN O.S. NO.332/2005 SUBMITTED BEFORE THE HONOURABLE MUNSIFF'S COURT, ALUVA.
- EXT. R8(B) : TRUE COPY OF THE JUDGMENT DATED 23/03/2010 PASSED BY THE HONOURABLE MUNSIFF'S COURT, ALUVA IN O.S. NO.332/2005.
- EXT. R8(C) : TRUE COPY OF DECREE DATED 23/03/2010 PASSED BY THE HONOURABLE MUNSIFF'S COURT, ALUVA IN O.S. NO.332/2005.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J

W.P(C) No.10338 of 2010

Dated this the 27th day of July, 2015

J U D G M E N T

The petitioner purchased certain properties, specifically an extent of 04.10 Ares from the Kerala Financial Corporation, the 7th respondent. The property was comprised in Re.Sy. No.104/24, Bolock No.IV in Parakkadavu Village of Aluva Taluk. The petitioner had been residing there along with her family. However, on an encroachment noticed, the petitioner filed a suit for injunction from trespass by the defendants, who were residing on the southern boundary of the property. The suit was subsequently amended to seek for fixation of boundaries also. The suit however, stood decreed finding that the boundaries of the petitioner be fixed as per Ext.P4 sketch. The controversy raised in the above writ petition is with respect to Ext.P4 sketch, which is said to be prepared without notice to the petitioner.

2. Admittedly, the property of 04.10 Ares belonging to a borrower of the 7th respondent, who had mortgaged the said property to the KFC. The borrower had been running a mill in the property. The KFC took over the same under Section 29 of the State Financial Corporation Act for reason of the default in loan and sold the property in public auction to the petitioner. The petitioner having started residence in the properties; being threatened with trespass, filed the above suit.

3. The petitioner in fact, relies on Ext.P2 location certificate issued to the predecessor-in-interest of the petitioner for the purpose of effecting mortgage to the KFC. Ext.P2 shows that the subject property has on its western boundary a pathway. The petitioner's specific case is that the property abutted the pathway and an extent of two cents at the boundary was at a higher level than the balance portion of the land. Only in such circumstance, the predecessor-in-interest of the petitioner had constructed a

retaining wall on the two cents with the intention of constructing shop rooms thereon. However, on default being committed in the loan account, the land was taken over by the KFC and hence, the shop room construction did not materialize. The location sketch at Ext.P3 was issued at re-survey conducted in the year 2000. Neither the predecessor in interest of the petitioner nor the KFC was informed of the correction made to the sketch which is produced at Ext.P4. The petitioner came to the possession of the property only later to Ext.P4, i.e, in the year 2002 as per Ext.P1.

4. Ext.P4 obviously was a resurvey conducted in the year 2001 when the property was in the possession of the KFC. Hence no notice would have been issued to the petitioner. In any event, the petitioner took out a Commission in the suit. The Commissioner was faced with Ext.P4 sketch. Hence the Commissioner on the basis of the resurvey sketch reported that the petitioner's boundary can be fixed in accordance with such

re-fixation. The court also relied on the re-survey and partly decreed the suit of the petitioner. The petitioner is said to have filed an appeal which is pending before the Additional District Court, North Paravur.

5. The petitioner on being confronted with Ext.P4 sketch had immediately filed an application at Ext.P5 which was rejected by Exts.P7 and P8 without indicating any reasons thereon. The petitioner's contention is that by the time the petitioner came back to the civil court, suit itself was partly decreed by judgment dated 23.03.2010, which is produced by the 8th respondent as Ext.R8(b).

6. Primarily it is to be noticed that the property purchased by the petitioner was 04.10 Ares, as is evidenced from Ext.P2 location plan and sketch issued by the Village officer, Parakkadavu. The same is also supported by Ext.P3 survey sketch. The resurvey conducted, which resulted in Ext.P4, obviously was

initiated by the owners of the adjacent property, i.e., the of the 8th respondent. The inspection was conducted and sketch was drawn up on the request of the predecessor-in-interest of the 8th respondent without notice to the owners of adjacent lands. The two cents which lies allegedly inside the boundary of the petitioner's property and which abuts the pathway on the western boundary is said to have been thus conceded to the 8th respondent, unauthorisedly and illegally.

7. The commission report obviously was filed before court on 12.08.2009. The petitioner is said to have immediately approached the survey authority as per Ext.P5 on 20.08.2009. The petitioner's application for re-survey was rejected by Ext.P6 and P7 on 16.02.2010 and the suit itself stood disposed of on 23.03.2010. The sketch at Ext.P2 as noticed above would indicate that the property possessed and owned by the predecessor-in-interest of the petitioner was of an extent 04.10Ares. The extent stood reduced as

is evidenced from the commission report to 3.74 Ares. In such circumstance, there is a reduction in the extent of the property that too, by the specific area of two cents as alleged by the petitioner in the suit itself. The lie of the 2 cents also would further advance the case of the petitioner since it is contiguous to the petitioner's property.

8. In such circumstance, it is only proper that the application filed by the petitioner, at Ext.P5, be considered afresh after conducting a survey of the property on the basis of Ext.P2, and the prior deeds of both the petitioner and the 8th respondent. Exts.P7 and P8 would stand set aside to facilitate such survey. The petitioner and the 8th respondent shall appear before the 3rd respondent who shall direct the resurvey to be conducted by the appropriate officer and that too with notice to the petitioner and the 8th respondent. The survey proceedings shall be expedited and the same shall be concluded at any rate within six months from

the date of receipt of certified copy of this judgment and the 3rd respondent shall pass appropriate orders on Ext.P5 as indicated on the survey.

9. Though the civil court has partly decreed the suit, it rejected the claim of the petitioner, raised on the 2 cents above referred, only based on Ext.P4 survey sketch which is now sought to be rectified. The conduct of a proper survey alone is hence necessitated and directed herein, based on which the petitioner could get appropriate orders in the appeal also. It is only appropriate hence that the hearing of the appeal be deferred for a period of six months, for which the petitioner could make an appropriate application before the appellate Court.

Writ petition would stand disposed of.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge