IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 17480 of 2010 (O)

(ORDER IN OS 203/2005 OF PRINCIPAL MUNSIFF'S COURT,KOZHIKODE-II DATED 12-01-2010

PETITIONER:

GADADHARAN
S/O.BHANUPRAKASH, 3/604, MANIPURAM LANE
NADAKKAVU, CALICUT.

BY ADV. SRI.A.DINESH RAO

RESPONDENTS:

1. NARENDRAN
   GANDHI ROAD, VELLALL P.O., CALICUT.

2. GEETHA INDRAKUMAR,
   W/O.INDRAKUMAR, 33/5266, GOLD LINK ROAD
   SREE PADMAM, CHEVAYOOR, CALICUT.

3. RETHI BHANUPRAKASH, ANUGRAHA,
   NELLIKKAVU ROAD, KARAPARAMBA P.O., CALICUT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 17480 of 2010 (O)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER NO.B3.10779/2000 DATED 20.11.2002 ISSUED BY THE TAHASILDAR, KOZHIKODE.

EXHIBIT P2: TRUE COPY OF THE PLAINT IN O.S.NO.203/2005 BEFORE THE COURT OF THE PRINCIPAL MUNSIFF-II, KOZHIKODE.

EXHIBIT P3: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETIITONER IN O.S. NO.203 OF 2005 ON THE FILE OF THE PRINCIPAL MUNSIFF-II, KOZHIKODE.

EXHIBIT P4: TRUE COPY OF THE ORDER DATED 12.1.2010 IN O.S.NO.203 OF 2005 ON THE FILE OF THE PRINCIPAL MUNSIFF-II, KOZHIKODE.

EXHIBIT P5: TRUE COPY OF THE REVIEW APPLICATION IN I.A.NO.561 OF 2010 IN O.S.NO.203 OF 2005 ON THE FILE OF THE PRINCIPAL MUNSIFF-II, KOZHIKODE.

EXHIBIT P6: TRUE COPY OF THE ORDER DATED 9.2.2010 IN I.A.NO.561 OF 2010 IN O.S.NO.203 OF 2005 ON THE FIL OF THE PRINCIPAL MUNSIFF-II, KOZHIKODE.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

P. BHAVADASAN, J.

W.P.(C) No.17480 of 2010

Dated this the 14th day of January, 2015.

JUDGMENT

Aggrieved by the order in review dated 9.2.2010 in I.A.No.561 of 2010 in O.S.No.203 of 2005 on an additional issue No.3 in the said O.S., the petitioner before the court below has come up in this writ petition.

2. Respondents 1 and 2 before this court instituted O.S.No.203 of 2005 before the Munsiff's Court, Kozhikode, seeking to restrain the defendants in the suit from trespassing into the plaint scheduled property. The petitioner is one among the defendants. The petitioner has got a case that it is a co-ownership property and therefore, the suit itself is not maintainable.

3. Even prior to the suit, the petitioner had moved the Tahasildar with regard to the payment of tax to the property and after hearing all persons interested in the matter, the order was passed in favour of the petitioner.

4. In the suit, the petitioner raised a plea that, in the light of the order passed by the Tahsildar, the suit is barred by resjudicata and is only to be rejected. The court below after considering the provisions of the Act, came to the conclusion that

the determination by the Tahasildar is only regard to the liability of the persons to pay the tax and nothing to do with the right of person or ownership or possession of the property. Accordingly, the plea made by the petitioner was rejected. Thus, the petitioner came up before this Court.

5. The learned counsel appearing for the petitioner would contend that after having participated in the proceedings before the Tahasildar, the respondents cannot be heard to say that he is not bound by the order of Tahasildar. In the proceedings before the Tahasildar, it is found that the petitioner was a person, who is liable to pay the tax, which indirectly shows that he is entitled to the property.

6. It is difficult to accept the above contention. Even according to the petitioner, in the suit, his contention is that the property is a co-owner property, though he has got an alternative case that by virtue of settlement deed property exclusively belonging to him. This is a matter to be decided in the suit. It therefore is clear that the right to the property is an issue open for determination and the present contention will have to be viewed from that angle.

7. As rightly noticed by the lower court, the mere fact that

the petitioner has been given the authority and the right to pay the tax does not mean that he is the exclusive owner of the property. If as a matter of fact, the petitioner is not able to show that he is entitled to the suit property by virtue of a settlement deed and the property is a co-owner property and in which case the payment of tax by one co-owner will be on behalf of all co-owners. In such situation, it could not be said that the order of the lower court is erroneous.

This writ petition is without any merits and is accordingly dismissed.

The question as to whether the suit is maintainable being an injunction suit as against the co-owners is left open for decision in the suit itself.

Sd/-
P. BHAVADASAN
JUDGE

Scl.