

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 20707 of 2015 (K)

PETITIONER:

S.SUKUMARAN, AGED 65 YEARS,
S/O.SREEDHARA MENON, RESIDING AT 73, SUPREME ENCLAVE,
MAYUR VIHAR, PHASE -1, NEW DELHI 91.

BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

1. THE SULTHAN BATHERI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, P.O.SULTHAN BATHERY,
WAYANADU 673 592.
2. THE SECRETARY,
SULTHAN BATHERI GRAMA PANCHAYATH,
P.O.SULTHAN BATHERY, WAYANADU 673 592.
3. C.PRASAD, S/O.GOVINDAN, RESIDING AT 5/148,
SOUPARNIKA, PO.SULTHAN BATHERY, WAYANADU 673 592.
4. KARAKUNNEL GEETHA W/O.C.PRASAD,
RESIDING AT 5/148, SSOUPARNIKA, PO.SULTHAN BATHERY,
WAYANADU 673 592.
5. THILOTHAMA,
W/O.RAMAKRISHNAN, RESIDING AT 1/324, P.O.THOVARIMALA,
PO.SULTHAN BATHERY, WAYANADU 673 592.
6. SINDHU,
W/O.BABURAJ, RESIDING AT 1/321, P.O.THOVARIMALA,
PO.SULTHAN BATHERY, WAYANADU 673 592.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

P1- A TRUE COPY OF THE AGREEMENT FOR SALE DATED 22.6.1994.

P2- A TRUE COPY OF THE ASSIGNMENT DEED DOCUMENT NO.2976/95.

P3- A TRUE COPY OF THE ASSIGNMENT DEED DOCUMENT NO.1542/96.

P4- A TRUE COPY OF THE COMPROMISE DECREE IN OS 254/95.

P5- A TRUE COPY OF THE DELIVERY ACCOUNT IN EP 92/00 IN OS 254/95.

P6- A TRUE COPY OF THE REPORT PREPARED BY THE ADVOCATE COMMISSIONER.

P6(a)- A TRUE COPY OF THE PLAN PREPARED BY THE SURVEYOR.

P7- A TRUE COPY OF THE DECREE IN OS 199/09.

P8- A TRUE COPY OF THE COMMON JUDGMENT IN OS 115/1999 , 76/2000, 199/2009, IN E.A.104/2000 OF SUB JUDGE, SULTHAN BATHERI.

P9- A TRUE COPY OF THE ORDER IN IA 2433/12 OF THIS HONOURABLE COURT.

P10- TRUE COPY OF THE 2347/2002 DATED 4.10.2002 OF SULTHAN BATHERI.

P11- TRUE COPY OF THE 6617/2010 DATED 3/12/2010 OF SULTHAN BATHERI.

P12- A TRUE COPY OF THE COMPLAINT MADE BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

P13- A TRUE COPY OF THE REMINDER OF THE PETITIONER TO THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.20707 of 2015

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Dated this the 9th day of July, 2015

JUDGMENT

The petitioner is aggrieved by the non-consideration of Exts.P12 and P13 submitted by him regarding the alleged unauthorised construction by respondents 3 to 6 in his property.

2. The petitioner has entered into an agreement for sale with one Manikunu Pathumabi for purchase of 35 cents of land facing Mysore and Sulthan Batheri road on the north and the Sulthan Batheri and Poomala road on the west. The agreement could not be completed within the time stipulated in view of the suit filed by the third respondent. In the meanwhile, in view of the financial difficulty faced by the vendor, the petitioner purchased 20 cents of land covered under Ext.P1 agreement. He also purchased the lands on the south of the property agreed to be purchased from the vendor and another. A compound wall was put up all along the boundary of the petitioner's property.

3. In view of the fact that the petitioner has agreed to purchase the remaining, only a temporary boundary was put up

along the eastern boundary demarcating the remaining 15 cents of land agreed to be purchased. In the meanwhile, the vendor colluded with the third respondent and pursuant to a compromise decree, assigned 15.627 cents, including the property covered under the agreement for sale to him. The property so included in the compromise decree was not delivered through court. In that process, the third respondent claimed right over the property covered under the property purchased by the petitioner.

4. The petitioner filed suits for specific performance of contract, setting aside the decree and the document pursuant to the said decree, fixation of boundary and redelivery of excess land taken possession by the third respondent. The suits were jointly tried and a common judgment was passed. The suit for specific performance and the suit for setting aside the decree and the document were dismissed. The suit for fixation of boundary and the application for re-delivery were dismissed. The court found that the trespassd area which is having an extent of 3 ½ cents on the east of the barbed wire fencing in Ext.C1(b) [Ext.P6(a)] herein is to be redelivered to the petitioner. The eastern boundary of the petitioner's property was also fixed at 3 ½ cents east of the barbed

wire fencing. Appeals were filed by the petitioner as well as the third respondent against the decrees and order of the court below.

5. During the pendency of the suit, the third respondent created assignment deeds, transferring properties obtained by him pursuant to the execution to his wife, the fourth respondent as well as respondents 5 and 6. The said documents were sham and not acted upon. Taking advantage of the petitioner's absence, respondents started construction of a multi storied building in the property belonging to the petitioner. The petitioner on noticing the same, made a complaint before the second respondent and requested him to take steps to the illegal construction. However, no action is taken by the panchayat in this regard despite a reminder. It is with this background, the petitioner has approached this Court.

6. Arguments have been heard.

7. The learned counsel for the petitioner confined his argument to the limited prayer for a direction to the respondent panchayat to consider Exts.P12 and P13 within the shortest possible time as the party respondents are proceeding with the alleged construction.

Therefore, the writ petition is disposed of directing respondents 1 and 2 to consider and pass appropriate orders on Exts.P12 and P13 after affording the petitioner and affected parties an opportunity of being heard within a period of one week from the date of copy of this judgment.

To facilitate early action, it shall be open to the petitioner to produce a copy of this judgment as well as copy of the writ petition before the respondent concerned at the earliest.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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