

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C) .No. 32702 of 2007 (R)

IN IA NO.5770/07 IN OS 409/2003 of PRINCIPAL MUNSIF'S COURT,
TRIVANDRUM

PETITIONER(S) :

1. SYAMALA,
D/O.NARAYANAN,
PANAYIL VEEDU KNOWN AS THOTTAPPURATHU VEEDU,
MADATHU VILAKATHU MURI, MADATHU VILAKATHU VILLAGE,
NORTH OF MURINJAPALAM, PATTOM P.O.,
THIRUVANANTHAPURAM.
2. CHANDRIKA,
D/O.NARAYANAN,
PANAYIL VEEDU KNOWN AS THOTTAPPURATHU VEEDU,
MADATHU VILAKATHU MURI, MADATHU VILAKATHU VILLAGE,
NORTH OF MURINJAPALAM, PATTOM P.O.,
THIRUVANANTHAPURAM.
3. BABY,
PANAYIL VEEDU KNOWN AS THOTTAPPURATHU VEEDU,
MADATHU VILAKATHU MURI, MADATHU VILAKATHU VILLAGE,
NORTH OF MURINJAPALAM, PATTOM P.O.,
THIRUVANANTHAPURAM.
4. PUSHKARAN,
S/O.PACHAN,
PANAYIL VEEDU KNOWN AS THOTTAPPURATHU VEEDU,
MADATHU VILAKATHU MURI, MADATHU VILAKATHU VILLAGE,
NORTH OF MURINJAPALAM, PATTOM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S) :

1. RAMANUJAN,
PADMAVILASATHU VEEDU, POTTAKUZHI, PATTOM,
THIRUVANANTHAPURAM,
NOW RESIDING AT MANGALATHU PARAMBATHU VEEDU,
VAZHAPPALLY, MUDAVOOR P.O., MUVATTUPUZHA.

2. MANOJ,
S/O.RAMANUJAN,
PADMAVILASATHU VEEDU, POTTAKUZHI, PATTOM,
THIRUVANANTHAPURAM,
NOW RESIDING AT MANGALATHU PARAMBATHU VEEDU,
VAZHAPPALLY, UDAVOOR P.O., MUVATTUPUZHA.
3. RENJITH,
S/O.RAMANUJAN,
PADMAVILASATHU VEEDU, POTTAKUZHI, PATTOM,
THIRUVANANTHAPURAM,
NOW RESIDING AT MANGALATHU PARAMBATHU VEEDU,
VAZHAPPALLY, MUDAVOOR P.O., MUVATTUPUZHA.

BY ADV. SRI.P.S.RAMESH KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ivs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1: COPY OF THE PLAN SUBMITTED BY THE TALUK SURVEYOR,
THIRUVANANTHAPURAM.

EXT. P2: COPY OF THE ORDER OF THE LAND TRIBUNAL,
THIRUVANANTHAPURAM DATED 29/09/1998 IN RC NO.14/95

EXT. P3: COPY OF THE IA NO.5770/07 IN OS NO.409/93 FILED BY THE
PETITIONERS ON 11/07/07.

EXT. P4: COPY OF THE OBJECTION FILED BY THE RESPONDENTS IN OS
NO.409/93 DATED 16/07/2007.

EXT. P5: COPY OF THE ORDER OF THE PRINCIPAL MUNSIFF COURT,
THIRUVANANTHAPURAM IN IA NO.5770/07 IN OS NO.409/93
DATED 14/08/2007.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P. BHAVADASAN, J.

W.P.(C). No. 32702 of 2007

Dated this the 31st day of March, 2015.

JUDGMENT

Under challenge is Ext.P5 order whereby the court below declined to allow the amendment of the written statement sought for by the defendants.

2. The respondents before this Court instituted O.S.409 of 1993 for declaration of title, for recovery of plaint B schedule property and for other consequential reliefs. The property occupied by the defendants is gifted by the predecessor-in-interest of the plaintiffs which is shown as B schedule. According to the original plaintiff, she is in absolute possession of 12 cents of property comprised in Sy. No. 1151. The original plaintiff pointed out that her father had gifted 3.5 cents to the defendants and they had put up a hut therein. It was further alleged that at a later point of time the plaintiffs noticed that the defendants had trespassed into 2 cents of plaint A schedule property which

is shown as plaint B schedule property. They, therefore, sought relief in respect of plaint B schedule property.

3. The defendants disputed the claim of the plaintiffs that they received 3.5 cents from the father of the plaintiffs. According to them, they were in occupation of 3.5 cents on their own independent right. They claimed kudikidappu right also. Pointing out that they had not encroached into any portion of the property, they prayed for dismissal of the suit.

4. The issue regarding kudikidappu was referred to the Land Tribunal. The Land Tribunal based on the authorised officer's report found that 3.5 cents occupied by the defendants is comprised in Sy. No. 1152 and since the plaint schedule property is comprised in Sy. No. 1151, the question of kudikidappu does not arise for consideration. That finding was returned to the civil court and that court accepted the same. Later on, a commission was taken out in the suit and measurement was made with the help of a

Surveyor. The Surveyor reported that portion of the property belonging to the defendant actually fall in Sy. No. 1151 also.

5. Based on the commission report and survey plan, the amendment was sought for. The plaintiff very strongly resisted the claim for amendment. The court below found that the amendment will change the nature and character of the suit and dismissed the petition.

6. Learned counsel for the petitioners assailed the finding of the court below by contending that it was only after the Commissioner and Surveyor measured the property that they came to know that 3.5 cents is comprised in Sy. No. 1151 as well. No prejudice is caused to the plaintiffs by having the written statement amended by incorporating Sy. 1151. It is also pointed out that if the amendment is not allowed, it will cause irreparable loss and injury to the defendants.

7. Learned counsel for the respondents pointed out that throughout, including before the Land Tribunal, the definite stand taken by the defendants was that their property is comprised in Sy. No. 1152. According to the respondents, if the amendment is allowed, the nature and character of the suit will be changed and the finding of the Land Tribunal will become redundant. That cannot be allowed. It is also pointed out that, the defendants, at no point of time, had a case that any portion of their property is in Sy. No.1151. Accordingly, it is contended that no grounds are made out to interfere with the order of the court below.

8. After having heard learned counsel on both sides, there seems to be considerable force in the submission made by the learned counsel for the respondents. It is true that in the Commission report based on the measurement by the Surveyor, it is shown that 3.5 cents, for which the claim is made by the defendants, fall

within Sy. No. 1151 also.

9. It is this fact which prompted the defendants to seek amendment. But it must be remembered that the defendants had no case that they had any portion of property in Sy. No. 1151 in which they put up a hut. Their consistent case was that the property is only in Sy. No. 1152. It is significant to notice that the authorised officer also reported that the property of the defendants is comprised in Sy. No. 1152. There was no objection taken to the said report filed by the authorised officer. It was accepting that report that the defendants were claiming kudikidappu right.

10. As rightly pointed out by the learned counsel for the respondents, if the amendment of the written statement is allowed, naturally the finding of the Land Tribunal in the matter will have to go and it will have to be decided afresh. That cannot be permitted.

For the above reasons, no grounds are made out to interfere with the finding of the court below. This Original Petition is without merits and it is accordingly dismissed. The court below is directed to make every endeavour to dispose of the suit as expeditiously as possible, at any rate, within six months from the date of re-opening of the court after summer vacation.

sb.

P. BHAVADASAN,
JUDGE