

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945

OP(C) NO. 1214 OF 2023

AGAINST THE COMMON ORDER IN I.A.NO.4/2022 AND IA NO.5/2022 IN CMA
3/2018 OF ADDITIONAL DISTRICT COURT-II, ALAPPUZHA

AGAINST THE ORDERS IN I.A.NO.1633/2015 IN O.S.NO.44/2011 OF

MUNSIFF COURT, ALAPUZA

PETITIONER/APPELLANTS/DEFENDANTS:

- 1 MATHEW JOSEPH, AGED 54 YEARS,
S/O MAMMEN JOSEPH, ETTIL HOUSE CHANGAMKARY MURI,
EDATHUA VILLAGE, KUTTANADU TALUK - 689573
- 2 VALSAMMA, AGED 57 YEARS
D/O MAMMEN JOSEPH, ETTIL HOUSE CHANGAMKARY MURI,
EDATHUA VILLAGE KUTTANADU TALUK - 689573
- 3 MERCY, AGED 51 YEARS,
D/O MAMMEN JOSEPH, ETTIL HOUSE CHANGAMKARY MURI,
EDATHUA VILLAGE, KUTTANADU TALUK - 689573
- 4 JESSY, AGED 44 YEARS,
D/O MAMMEN JOSEPH, ETTIL HOUSE, CHANGAMKARY MURI,
EDATHUA VILLAGE, KUTTANADU TALUK- 689573
BY ADV UNNI. K.K. (EZHUMATTOOR)

RESPONDENT/RESPONDENTS/PLAINTIFFS:

- 1 SARAMMA MATHEW, AGED ABOUT 80 YEARS,
KALATHIL MEDAYIL HOUSE, ANAPPRAMPAL SOUTH MURI,
THALAVADY VILLAGE - 689572
- 2 EAPEN, AGED ABOUT 45 YEARS,
KALATHIL MEDAYIL HOUSE, ANAPRAMPAL SOUTH MURI,
THALAVADY VILLAGE - 689572
- 3 JOE, AGED ABOUT 46 YEARS,
ETTEL HOUSE, CHANGAMKARY MURI,
EDTHUA VILLAGE - 689573
- 4 ALEXANDER MATHEW, AGED ABOUT 48 YEARS,
KALATHIL MEDAYIL HOUSE, ANAPPRAMPAL SOUTH MURI,
THALAVADY VILLAGE NOW RESIDING AT 17 CHURCH WEST, SMITH
PALLAS, K7A1P6, ONTARIO, CANADA
- 5 ABRAHAM MATHEW, AGED ABOUT 40 YEARS,
KALATHIL MEDAYIL HOUSE, ANAPPRAMPAL SOUTH MURI,
THALAVADY VILLAGE NOW RESIDING AT AS ABHEY ABRAHAM,
KALATHIL, 3 MALABAR CRES, BRAMPTAN,
ON L-68, 3X6 CANADA.

- 6 JOSEPH, AGED SBOUY 42 YEARS
NOW RESIDING AT AS JOSEPH MATHEW, KALATHIL MEDAYIL,
NORDIC, MARITIME SERVICE BUILDING-D, PO BOX NO.5356,
FUJKIRAH, FREE ZONE, UAE
- 7 SHYNI ABHEY ABRAHAM KALATHIL,
AGED 47 YEARS, W/O ABRAHAM MATHEW 298 BUICK BOULEUARD,
BRAMPTON, ONTARIO, L6S3X6, CANADA
- 8 KEVIN ABRAHAM KALATHIL,
AGED 19 YEARS, S/O ABRAHAM MATHEW 298 BUICK BOULEUARD,
BRAMPTON, ONTARIO, L6S3X6, CANADA
- 9 SHERIN ABRAHAM KALATHIL,
AGED 14 YEARS,
D/O ABRAHAM MATHEW 298 BUICK BOULEUARD, BRAMPTON,
ONTARIO, L6S3X6, CANADA

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 30.06.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This is the final stage of third round litigation between the very same parties originally started in the year 1955 by initiation of a suit. After the culmination of the said suit, yet another suit was filed in the year 1979, seeking a decree of declaration of right, title and interest over the property and also for a permanent prohibitory injunction, besides a prayer for recovery of the said property. Admittedly, at that time, a building was there in the property alleged to have been constructed by the defendant. But, the trial court has granted a decree in favour of the plaintiff in the 1979 suit, which was partially reversed by the first appellate court. In the second appellate stage, it was confirmed. In short, the 1979 suit ended in a decree declaring right, title and interest over the property and allowing recovery of possession of the property, but the right claimed over the building was not declared. To that extent, the decree and judgment of the trial court was set aside. A decree of permanent prohibitory injunction was also

granted in the 1979 suit without addressing the question of the building situated in the property. There is no decree for mandatory injunction for demolition or payment of any improvements on that account. The building is still situated in the property. According to the plaintiffs/respondents, the earlier one was demolished and new one was constructed in the place by violating the decree of permanent prohibitory injunction. If that be so, necessarily the issue has to be dealt by initiating proper execution proceedings for the violation of the decree. Instead of proceeding with the execution proceedings, another suit was filed in the year 2011, a third round litigation. It is also a suit for declaration of title and for permanent prohibitory injunction restraining the defendant not to proceed with the construction over the property. The trial court decreed the suit under Ext.P5. An ex parte decree was granted in favour of the plaintiff in that suit, that is, the suit of the year 2011. Thereon, they filed an application for setting aside the ex parte decree and it was ended in dismissal, against which an appeal was preferred, which

was also ended in dismissal for non-prosecution. Thereon, they filed another application to restore the appeal on file. All these would show how the matter was handled by an unscrupulous litigant for a long period, right from the year 1979. They have filed applications one after another, keeping away from the respective courts and the provisions in the CPC were misused as a device to drag and defeat the lawful rights of the plaintiffs in the property. This is yet another attempt that the very same petitioner came up with an application under Article 227 of the Constitution, that too, without showing sufficient reason and as such, the same is liable to be dismissed. The petitioner is permitted to withdraw the amount deposited, which comes to Rs.20,000/-. The Registry is directed to release the said amount to the petitioner on proper application.

The original petition is dismissed accordingly.

Sd/-
P. SOMARAJAN
JUDGE

msh

APPENDIX OF OP(C) 1214/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE JUDGEMENT DATED 6.12.1985 IN OS NO.656/1979 OF ADDL. MUNSIFF COURT ALAPUZHA
Exhibit P2	TRUE COPY OF THE JUDGMENT DATED 31.8.1991 IN AS NO.8/1987 OF ADDL. DISTRICT JUDGE, ALAPUZHA
Exhibit P3	TRUE COPY OF THE JUDGEMENT DATED 4.4.2006 IN S.A NO.146/1993 OF THIS HON'BLE COURT
Exhibit P4	TRUE COPY OF THE PLAINT IN OS NO.44/2011 FILED BY THE RESPONDENTS NO.1 AND 2
Exhibit P5	TRUE COPY OF THE EX-PARTE JUDGEMENT DATED 27.9.2014 IN OS NO.44/2011 OF MUNSIFF COURT ALAPUZHA
Exhibit P6	TRUE COPY OF THE I.A NO.1633/2015 FILED BEFORE THE MUNSIFF COURT, ALAPUZHA
Exhibit P7	TRUE COPY OF THE ORDER DATED 30.10.2017 IN I A NO.1633/2015 IN OS NO.44/2011
Exhibit P8	TRUE COPY OF THE CMA NO.3/2018 PENDING BEFORE THE DISTRICT COURT, ALAPUZHA
Exhibit P9	TRUE COPY OF THE ORDER DATED 6.1.2018 IN IA NO.20/2018 IN CMA NO.3/2018 OF DISTRICT COURT, ALAPUZHA
Exhibit P10	TRUE COPY OF THE ORDER DATED 23.07.2022 IN CMA NO.3/2018 OF DISTRICT COURT, ALAPUZHA
Exhibit P11	TRUE COPY OF THE I A NO.4/2022 IN CMA NO.3/2018 ON THE FILE OF DISTRICT COURT, ALPAUZHA
Exhibit P12	TRUE COPY OF THE I A NO.5/2022 IN CMA NO.3/2018
Exhibit P13	TRUE COPY OF THE COMMON ORDER DATED 29.5.2023 OF ADDITIONAL DISTRICT COURT-II, ALAPUZHA IN IA NO.4/2022 AND IA NO.5/2022 IN CMA NO.3/2018