

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 5TH DAY OF JANUARY 2024 / 15TH POUSHA, 1945

OP(C) NO. 2739 OF 2023

OS 102/2020 OF MUNSIF COURT, PALA

PETITIONER(S)/PETITIONER/PLAINTIFF:

- 1 RAMACHANDRAN NAIR
 AGED 63 YEARS
 S/O. NEELAKANDAPILLA, MURUKALLEL PUTHENPURACKAL HOUSE,
 POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE, PIN -
 686577
 BY ADVS.
 M.NARENDRA KUMAR
 HARSHADEV M.

RESPONDENT (S)/RESPONDENTS/DEFENDANTS:

- 1 M.N. SIVAKUMAR,
 AGED 77 YEARS
 S/O. NEELAKANDAPILLA, ARUKALLEL PUTHENPURACKAL HOUSE,
 POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE, PIN -
 686577
- 2 RUGMINIAMMA
 AGED 83 YEARS
 D/O. NEELAKANDAPILLA, MARUKALLEL PUTHENPURACKAL HOUSE,
 POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE., PIN -
 686577
- 3 MURALEEDHARAN NAIR
 AGED 61 YEARS
 S/O. NEELAKANDAPILLA MARUKALLEL PUTHENPURACKAL HOUSE,
 POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE., PIN -
 686577
- 4 ASOKAN
 AGED 60 YEARS
 S/O. RUGMINIAMMA, MARUKALLEL PUTHENPURACKAL HOUSE,
 POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE., PIN -
 686577
- 5 ARAVINDAKSHAN
 AGED 58 YEARS
 S/O. RUGMINIAMMA, MARUKALLEL PUTHENPURACKAL HOUSE,
 POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE., PIN -
 686577
- 6 SASIKUMAR
 AGED 56 YEARS
 S/O. RUGMINIAMMA, MARUKALLEL PUTHENPURACKAL HOUSE,

POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE., PIN -
686577

7

B. SHAJU

AGED 63 YEARS

S/O. BALAKRISHNAN NAIR, MARUKALLEL PUTHENPURACKAL HOUSE,
POOVARANY. P.O., POORAVANY KARA, POOVARANY VILLAGE., PIN -
686577

BY ADVS.

P.C. HARIDAS

AKHIL GANESH(K/2162/2021)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05.01.2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.JAYACHANDRAN, J.

O.P.(C.) No.2739 of 2023

Dated this the 05th day of January, 2024

JUDGMENT

The petitioner herein is the plaintiff in two suits, O.S. No.102/2020 and O.S. No.141/2020 and the third defendant in O.S. No.121/2020, all pending before the Munsiff's Court, Pala. In all the three suits, a pathway which leads to the property of the petitioner, among other things, is the subject matter. While O.S. No.102/2020 is a suit for injunction simpliciter, O.S. No.121/2020 is one for declaration of easement by prescription, in which the petitioner (who is the third defendant in that suit) has placed a counter claim for fixation of boundary between the disputed pathway and the property of the plaintiff therein (seventh respondent herein). O.S. No.141/2020 is one for

specific performance of a contract with respect to a property, owned by respondents 1 to 6, of which the disputed pathway forms a part. A commission for local inspection was taken out and his report and sketch are produced in this proceeding, as Exts.P5 and P5(a). An application for issuance of a Commission to measure out the properties, filed before the court below vide Ext.P8, was, however, dismissed vide Ext.P1 order by the learned Munsiff, stating that the facts sought to be ascertained by virtue of that application are not required for a proper adjudication of the issues involved in the suits. Ext.P1 order is under challenge in this Original Petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 7, except the third respondent. Though notice was served on the third respondent, there is no appearance.

3. Learned counsel for the petitioner would

submit that, since the dispute in all the three suits centers around the pathway which has been described as item No.4 in Ext.P5(a) sketch and inasmuch as, the petitioner herein (the counter claim petitioner in O.S. No.121/2020) had sought for fixation of boundary between the pathway and the property of the seventh respondent (marked as item No.1 in Ext.P5(a) plan), the measurement commission sought for is quite essential. Dismissal of Ext.P8 application vide Ext.P1 is therefore bad in law, is the submission made by the learned counsel for the petitioner.

4. Per contra, this Original Petition was seriously opposed by the learned counsel for respondents 1 to 7, except the third respondent. Learned counsel invited the attention of this Court to the facts sought to be ascertained in Ext.P8 application, to point out that many of the points referred to therein are either irrelevant, or in respect of

undisputed matters. Learned counsel also pointed out that the affidavit in support of the commission application is sworn to by the counsel and not by the party.

5. Having heard the learned counsel appearing on both sides, this Court is of the view that Ext.P1 order warrants interference by this Court under Article 227 of the Constitution.

6. As rightly pointed out by the learned counsel for the petitioner, there is a prayer in the counter-claim for fixation of boundary by and between the pathway and the property of the seventh respondent herein, who is the plaintiff in O.S. No.121/2020. A clear identity of the pathway is also a legal requirement in respect of a claim for easement by prescription, which is the main subject matter of the suit, O.S. No.121/2020. Insofar as O.S. No.121/2020 is concerned, the petitioner herein is the prospective

purchaser, who seeks specific performance of property described as Item No.2 in Ext.P5(a) plan, of which the disputed pathway was part and parcel. In the totality of the circumstances, a commission to measure out the properties, which are described as item Nos.1, 2 and 4 in Ext.P5 (a) plan seems to be quite necessary.

7. This Court, however, finds merit in the submission made by the learned counsel for the respondents that point Nos.1 and 2 which are sought to be noted vide Ext.P8 application are irrelevant and unnecessary and hence need not be ascertained and reported. Based on the submissions made by the learned counsel appearing on both sides, this Court may clarify that point Nos.3 and 4 pertains to item No.2 and that point No.5 pertains to item No.1, in Ext.P5(a) plan.

8. In the light of the above discussion, Ext.P8 application, as clarified above, will stand allowed; and

the learned Munsiff will depute a commissioner, with the assistance of a surveyor, to execute the commission. An enlarged copy of Ext.P5(a) plan submitted by the learned counsel for the petitioner will form part of this judgment for easy reference.

The Original Petition is disposed of as above.

Sd/-

C. JAYACHANDRAN

JUDGE

SKP/05-01

APPENDIX OF OP(C) 2739/2023

PETITIONER'S EXHIBITS:

EXHIBIT -P1 TRUE COPY OF THE ORDER DATED 06.11.2023 IN I.A. NO. 6 OF 2022 IN O.S. NO. 102 OF 2020 IN JOINT TRIAL WITH O.S. NO. 121 OF 2020 AND 141 OF 2020 IN THE COURT OF MUNSIFF PALA

EXHIBIT -P2 TRUE COPY OF PLAINT IN O.S. NO. 102 OF 2020 IN THE COURT OF MUNSIFF PALA DATED 18.05.2020

EXHIBIT -P3 TRUE COPY OF THE PLAINT IN O.S. NO. 121 OF 2020 IN THE COURT OF MUNSIFF PALA DATED 27.05.2020

EXHIBIT-P 4 TRUE COPY OF THE WRITTEN STATEMENT AND COUNTER CLAIM IN O.S.NO.121/2020 IN THE COURT OF MUNSIFF PALA DATED 1.1.2021

EXHIBIT -P5 TRUE COPY OF THE COMMISSION REPORT IN O.S. NO. 121 OF 2020 DATED 1.2.2021

EXHIBIT-P5 (A) TRUE COPY OF THE SKETCH ALONG WITH COMMISSION REPORT IN O.S. NO. 121 OF 2020

EXHIBIT -P6 TRUE COPY OF THE PLAINT IN OS NO. 141/2020 IN THE COURT OF MUNSIFF PALA DATED 17.06.2020

EXHIBIT -P7 TRUE COPY OF THE SALE DEED AND AGREEMENT DATED 3.12.2006

EXHIBIT -P8 TRUE COPY OF THE APPLICATION DATED 17.12.2022 IN I.A. NO. 6 OF 2022

EXHIBIT -P9 TRUE COPY OF THE OBJECTION FILED BY THE 7TH RESPONDENT IN I.A.NO.6/23 DATED 19.1.2023

RESPONDENTS' EXHIBITS:NIL

TRUE COPY

P.A. TO JUDGE

