

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOMAS P.JOSEPH

MONDAY, THE 31ST OCTOBER 2011 / 9TH KARTHIKA 1933

OP(C).No. 2184 of 2011(O)

OS.41/2011 of MUNSIF COURT, VAIKOM

PETITIONER

LATHAMANI, AGED 57 YEARS,  
W/O.PRAKASAN, NADUVATHURUTHIL HOUSE,  
ULLALA KARA, THALAYAZHAM P.O.,  
THALAYAZHAM VILLAGE, VAIKOM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)  
SRI.K.RAVI (PARIYARATH)

RESPONDENT(S):

1. VINODKUMAR, S/O.CHELLAPPAN PILLAI,  
TEACHER, AGED 55 YEARS,  
ARYAPPALLY HOUSE, ULLALA KARA, THALAYAZHAM P.O.,  
THALAYAZHAM VILLAGE, VAIKOM TALUK.686 141.

2. RAJASEKHARAN NAIR,  
S/O.CHELLAPPAN PILLAI, AGED 57 YEARS,  
RETD. GOVT. SERVANT, ARYAPPALLY HOUSE,  
OLLALA KARA, THALAYAZHAM P.O.,  
THALAYAZHAM VILLAGE, VAIKOM TALUK. 686607.

R1 & R2 BY SRI.T.KRISHNAN UNNI, SENIOR ADVOCATE  
R1 & R2 BY ADV. SRI.SAJU.S.A

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION  
ON 31/10/2011, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

tss

**OP(C) NO.2184/2011**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**P1:- COPY OF THE PLAINT IN OS. 41/2011 DTD. 7.2.2011 ON THE FILE OF THE MUNSIFF COURT, VAIKOM.**

**P2:- COPY OF THE WRITTEN STATEMENT OF THE IST DEFENDANT IN EXT.P1 SUIT DTD. 19.3.2011.**

**P3:- COPY OF THE COMMISSINER'S REPORT AND PLAN IN EXT.P1 SUIT DT.D 21.2.2011.**

**P4:- COPY OF THE APPLICATION IA 813/2011 IN EXT.P1 DTD 3.6.2011.**

**P5:- COPY OF THE ORDER PASSED IN IA. 813/2011 IN OS. 41/20101 DTD. 28.6.2011 ON THE FILE OF THE MUNSIFF COURT,VAIKOM.**

**RESPONDENT'S EXHIBITS**

**NIL:-**

**TRUE COPY**

**P.A. TO JUDGE**

**tss**

**THOMAS P. JOSEPH, J.**

-----  
**O.P.(C) No.2184 of 2011**  
-----

**Dated this the 31<sup>st</sup> day of October, 2011.**

**JUDGMENT**

In the course of trial of the suit for injunction against respondents trespassing into or forcibly reclaiming a portion of the suit property, petitioner/plaintiff filed Ext.P4, application for the issue of a survey commission. That application was dismissed by Ext.P5, order which is under challenge.

2. According to the petitioner, the 12 cents excluding four cents which is already sold and three metres wide and four metres long space set apart for way, belongs to her as per partition deed No.4414 of 1971. In the plaint schedule the eastern and western boundaries of the said property are described as half of the thodu (allegedly) situated on the east and west. On the south, it is not disputed, is a public road and on the north, it is land and chira. Petitioner stated in paragraph 3 of the plaint that petitioner and the 2<sup>nd</sup> respondent are dealing with half portion each of the thodu on the east and west. According to the petitioner, respondents are making attempt to reclaim the said thodu. Respondents denied the claim of petitioner and contended that there is no such thodu on the east or west and it is only a chal for flow of water provided by the respondents. Parties went into the evidence. It is while so, that based on certain questions put in cross examination to the petitioner, she filed Ext.P4, application for survey commission to identify the property. That application was

dismissed by Ext.P5, order.

3. It is contended by learned counsel that in view of the dispute raised by respondents regarding identity of the property, it is necessary that properties are measured with reference to title deeds and other documents failing which it is possible in the course of execution that disputes arose as to the extent of property.

4. Learned Senior Advocate appearing for respondents contends that since this is merely a suit for injunction it is not necessary to measure the property as stated by petitioner. It is also contended that as per the averments in paragraphs 2 and 3 of the plaint even according to the petitioner the thodu or water chal did not form part of the suit property and it is only that according to the petitioner, herself and 2<sup>nd</sup> respondent are dealing with half portion each of the same.

5. As the suit is instituted, it is merely for prohibitory injunction paying court fee is paid under Section 27(c) of the Court Fees and Suits Valuation Act (for short, "the Act"). The Supreme Court in **Anathula Sudhakar v. P.Buchi Reddy ((2008) 4 SCC 594)** has held that in suits for injunction it is not necessary to go into complicated questions of title and in such situation, parties could be relegated to a comprehensive suit on title. In the present case as aforesaid, court fee paid is only under Sec.27(c) of the Act. Hence an enquiry into, or finding on title is not required. In that view of the matter it is not necessary to go into the title claimed or denied by the parties. The suit has to be

decided based on the claim of possession as payment of court fee is only under Sec.27(c) of the Act. I make it clear that learned Munsiff is not required to enter a finding regarding title denied or claimed by parties which, it is open to the parties to settle if they are so advised, in a comprehensive suit on title. In view of the observations I have made above, it is not necessary to interfere with Ext.P5, order.

Resultantly with the observations made above this Original Petition is dismissed.

**THOMAS P.JOSEPH,**  
**Judge.**

**cks**