

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

SATURDAY, THE 31ST DAY OF MAY 2014/10TH JYAISHTA, 1936

WP(C).No. 13823 of 2014 (C)

PETITIONER(S):

- 1. VELAPPAN NAIR AGED 74 YEARS
S/O.NARAYANAN NAIR, NELLAMBURATH HOUSE
ASAMANNOOR KARA, ASAMANNOOR VILLAGE, PERUMBAVOOR.**
- 2. SARASWATHIAMMA, AGED 72 YEARS
W/O.VELAPPAN NAIR, NELLAMBURATH HOUSE, ASAMANNOOR KARA
ASAMANNOOR VILLAGE, PERUMBAVOOR.**

**BY ADVS.SRI.S.RENJITH
SRI.K.O.SANTHOSH
SRI.GEORGE MATHEW (ONATTUPARAMBIL)
SRI.S.UNNIKRISHNAN (NELLAD)**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM - 682 030.**
- 2. ASAMANNOOR GRAMA PANCHAYAT,
ASAMANNOOR, PERUMBAVOOR, ERNAKULAM - 683 549
REP. BY ITS SECRETARY.**
- 3. ADDITIONAL TAHASILDHAR,
KUNNATHUNADU TALUK OFFICE, PERUMBAVOOR
ERNAKULAM - 683 542.**
- 4. TALUK SURVEYOR,
KUNNATHUNADU TALUK OFFICE, PERUMBAVOOR
ERNAKULAM - 683 542.**

R BY GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31-05-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF JUDGMENT DATED 17.3.2012 IN O.S.NO.95 OF 2008 OF MUNSIFF'S COURT PERUMBAVOOR.

EXHIBIT P2: COPY OF THE SKETCH OF THE PROPERTY OF THE PETITIONERS.

EXHIBIT P3: COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS.

EXHIBIT P4: COPY OF THE OBJECTION DATED 12.03.2014 SUBMITTED BY THE PETITIONERS.

EXHIBIT P5: COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 13.5.2014.

EXHIBIT P6: COPY OF THE APPLICATION PREFERRED BY THE 2ND RESPONDENT BEFORE THE 4TH RESPONDENT OBTAINED UNDER THE RIGHT TO INFORMATION ACT.

EXHIBIT P7: COPY OF THE E.P.NO.25 OF 2014 IN O.S.NO.95 OF 2008 OF MUNSIFF'S COURT PERUMBAVOOR.

EXHIBIT P8: COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT TO THE PETITIONERS.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

TRUE COPY

PATO JUDGE

A.M. Shaffique, J.

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W.P(C) No. 13823 of 2014

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Dated this, the 31st day of May, 2014.

J U D G M E N T

Petitioners have approached this Court challenging Exts. P3 and P8 notices issued by the 4th respondent proposing to conduct survey with reference to the property in Sy. No. 133/7 of Asamannoor Village, Kunnathunadu, coming under Block No. 14.

2. The petitioners submit that they had obtained a decree from a civil court when there was an attempt on the part of the State Government as well as the Panchayat to trespass into the property of the petitioners. The suit was decreed and the civil court had granted a decree declaring the petitioners as owners in possession of certain item of the land specified in Ext. C2(a) plan. As far as the 1st petitioner is concerned, his title has been declared with reference to plots 1, 2 and 3 and plot no. 4 has been declared in favour of the 2nd plaintiff. The defendants are also restrained from trespassing into plaint A and B scheduled properties or from committing any waste. According to the petitioners, despite such decree being passed, the respondent authorities are intending to survey the property in Sy. No. 133/7.

3. Apparently, on a perusal of the survey plan produced by the petitioners as Ext. P2, items 1, 2, 3 and 4

do not cover Sy. No. 133/7. The said property is described in the plan as 'Thodu' having an extent of 8.20 ares. Apparently, the decree covers only A and B schedule properties and a perusal of the judgment clearly indicates that petitioners have no title or possession with reference to said item of lands coming under Sy. No. 133/7.

4. The learned Government Pleader also relies upon paragraph 9 of the judgment in O.S. No. 95/2008 to contend that the court has specifically indicated that the thodu and its bund on the eastern side of plaint A & B schedule properties which are denoted as plot Nos. 5 and 6 is situated in re-survey No. 133/7.

5. Under these circumstances, It is clear that the petitioners have no title, ownership or possession in respect of property covered by Sy. No. 133/7. If the petitioners are in possession of any extent of land covered by the aforesaid survey number, definitely, it shall be open for the Survey Department to measure out the same and take appropriate proceedings in accordance with law. For that purpose, if a survey is being done, it cannot be questioned by the petitioners in these proceedings. If the petitioners have a case that while effecting survey, the Revenue Department has encroached into the property described as plot nos.

1, 2, 3 and 4 in plaint A & B demarcated in Ext. C2(a) plan prepared by the Advocate Commissioner, it shall always be open for the petitioners to approach the civil court for appropriate reliefs.

In the above circumstances, I do not think that the petitioners are entitled to seek any relief in this writ petition and accordingly the same is dismissed.

Sd/- A.M. Shaffique, Judge.

Tds/