
(2018) 01 KL CK 0058
In the High Court Of Kerala
Case No : 498 of 2016

SIVANKUTTY & ANR.

APPELLANT

Vs

JAYAKUMAR

RESPONDENT

Date of Decision : 08-01-2018

Acts Referred:

[3998](#) Constitution of India, [3998-227](#) Article 227 -
Power of superintendence over all courts by the High Court

Citation : (2018) 01 KL CK 0058

Hon'ble Judges : Alexander Thomas

Bench : Single Bench

Advocate : S.ANANTHAKRISHNAN, N.K.SUBRAMANIAN, K.SUNITHA VINOD

Judgement

1. The main prayer in this Original Petition (Civil) filed under the enabling provisions contained in Art.227 of the Constitution of India is as follows:

To set aside or modify Ext.P-3 order passed in I.A.1037 of 2015 in O.S.452 of 2007 on the file of the Munsiff's Court, Vaikom and direct the

Munsiff's Court, Vaikom/the Advocate Commissioner to ascertain and report the facts to be ascertained and report on behalf of the petitioners

and also to direct the Munsiff's Court, Vaikom to replace Mr.Anthrayose, the surveyor by another surveyor preferably the Taluk Surveyor to

assist the Advocate Commissioner to prepare the survey plan.

2. Heard Sri.S.Ananthakrishnan, learned counsel appearing for the petitioners/defendants and Smt.K.Sunitha Vinod, learned counsel appearing for

the respondent/plaintiff.

3. It is stated that, by the judgment in appeal, the decree passed in O.S.No. 452/2007 was set aside by the appellate court concerned and the said

suit was remitted to the trial court concerned directing that the said court will

consider I.A.No.1559/2009, the application to set aside the commission report and the survey plan, with opportunity to adduce further evidence. In furtherance thereof, the said I.A.No.1559/2009 has been allowed by the trial court. Since the petitioners/defendants had specific grievance with regard to one Sri.Anthrayose, surveyor, I.A.No. 1212/2014 was filed by the petitioners to remove the said surveyor and in the said application, the court below had passed orders removing Sri.Anthrayose, the panel surveyor, in the matter of assisting the Advocate Commissioner and had directed that the Taluk Surveyor should assist the Advocate Commissioner and this has been so ordered as per order dated 1.10.2014 in I.A.No. 1212/2014 in the O.S. Pursuant to that , Ext.P-2 fresh commission report dated 15.6.2015 was submitted and the court below by the impugned Ext.P-3 order dated 2.12.2015 had set aside the said report at the instance of the respondent/plaintiff and as per the said impugned Ext.P-3 order, the court below has appointed the very same surveyor Sri.Anthrayose, who was earlier removed as per order dated 1.10.2014. It is also pointed out that the court below by the impugned Ext.P-3 order has also overruled and declined the prayer of the petitioners to get the point ascertained on their behalf, which was established as per the order in I.A.No. 1559/2009. It is in light of these aspects that the present O.P(C). has been filed with the aforementioned prayer.

4. On going through the pleadings and materials on record, this Court is of the view that the court below has committed an illegality in passing Ext.P-3 order to the extent to which it has again directed to include Sri.Anthrayose, panel surveyor so as to assist the Advocate Commissioner inasmuch as the said person was already removed from that responsibility as per order dated 1.10.2014. On this aspect, the impugned order is liable to be interdicted and modified on that limited aspect. Accordingly, it is ordered that the order at Ext.P-3 directing that Sri.Anthrayose, the panel surveyor should be deputed to assist the Advocate Commissioner will stand set aside and in its place it is ordered that it is open to the trial court to appoint any other qualified panel surveyor.

5. The petitioners' counsel would also urge that aspects mentioned in Grounds 3 and 4 of this Original Petition have not been properly taken into consideration by the trial court while passing Ext.P-3 order. Grounds 3 and 4 read

as follows:

3. In directing the Advocate Commissioner only to ascertain and report the facts as stated in I.A.428 of 2007, and also appointing Sri.Anthrayose

as surveyor to assist the Advocate Commissioner while passing exhibit P-3 order, the court below has exercised a jurisdiction not vested in it by

law.

4. The court below ought to have taken note of the fact that by order I.A.1559 of 2009, the rights the petitioners to get the facts sought to be

ascertained them has been established and also as per order in I.A.1212 of 2014 the right of the petitioners to remove and replace Sri.Anthrayose

has been established. The above being so, there was no justification on the part of the court below in denying the petitioners their rights to get the

facts to be ascertained on their behalf and to appoint another surveyor preferably taluk surveyor to assess the advocate Commissioner.

It is made clear that it will be open to the petitioners to appropriately move before the Advocate Commissioner to note down the points with

respect to the abovesaid aspects and necessary action thereon may be taken in accordance with law.

6. Smt.K.Sunitha Vinod, learned counsel appearing for the respondent/plaintiff would submit that direction may also be issued by this Court to the

Advocate Commissioner so that the properties covered by survey No.290/13B/4, 290/13A/2, 290/12/2, 290/12/4, 290/13A/5, 290/13A/4 and

290/13A/1 of Vadayar Village, Vaikom Taluk, may also be measured by the Advocate Commissioner. It is made clear that it will be open to the

respondent to submit necessary work memo to that effect to the Advocate Commissioner, which shall then be considered for appropriate action, in

accordance with law. The petitioner will produce a certified copy of this judgment before the trial court concerned for necessary action.