

**Rajappan vs Tahsildar**

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**SooperKanoon Citation :** [sooperkanoon.com/1369324](https://sooperkanoon.com/1369324)

**Court :** Kerala

**Decided On :** Jul-12-2023

**Judge :** Honourable Mr. Justice Gopinath P.

**Appeal No. :** WP(C)/20393/2023

**Appellant :** Rajappan

**Respondent :** Tahsildar

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.  
WEDNESDAY, THE 12TH DAY OF JULY 2023 / 21ST ASHADHA, 1945  
PETITIONER: RAJAPPAN, AGED 63 YEARS, S/O RAMAKRISHNAN,  
VELEKKAT HOUSE, PERINGOTTUKARA, KIZHAKKUMMURI  
VILLAGE, THRISSUR DISTRICT - 680 656. BY ADVS. ANIL KUMAR  
SREEDHARAN V.M.KRISHNAKUMAR BIJOY S. RESPONDENTS:

1 TAHSILDAR, MALLAPPALLY TALUK OFFICE, CIVIL STATION,  
MALLAPPALLY, PATHANAMTHITTA, PIN - 689 585. 2 TALUK  
SURVEYOR, MALLAPPILLY TALUK OFRICE, CIVIL STATION,  
MALLAPPALLY, PATHANAMTHITTA, PIN - 689 585. 3 VILLAGE

OFFICER KALLOOPARA VILLAGE OFFICE, PATHANAMTHITTA - 689 583. 4 PREETHY MATHEW, D/O LATE A.S.MATHEW, APPAKOTTUMURIYIL HOUSE, THURUTHIKKAD.P.O , MALLAPPALLY, PATHANAMTHITTA - 689 597. 5 MARIYAMMA.C.J W/O A.S. MATHEW, APPAKOTTUMURIYIL HOUSE, THURUTHIKKAD.P.O , MALLAPPALLY, PATHANAMTHITTA - 689 597. 6 SRI.PRADEEP MATHEW, S/O. A. S.MATHEW, APPAKOTTUMURIYIL HOUSE, THURUTHICADU P. O. , MALLAPPALLY, PATHANAMTHITTA,PIN - 689 597.

7 PRASAD MATHEW, S /O. A. S.MATHEW, APPAKOTTUMURIYIL HOUSE, THURUTHICADU P. O. , MALLAPPALLY, PATHANAMTHITTA,PIN - 689 597. BY ADVS. S.ABHILASH K.SIJU(K/638/1994) ANJANA KANNATH(K/939/2014) GOPIKA T.G.(K/922/2021) FATHIMA MOHAN(K/1704/2021) AHSANA(K/001196/2022) SMT. PREETHA K K (SR GP) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

The petitioner has approached this Court seeking the following reliefs :-

(i) Call for records leading to Ext.P7 and issue a writ in the nature of certiorari quashing Ext.P7.

(ii) Issue a writ in the nature of mandamus

commanding the respondents 1 and 2 to proceed with the fixation of boundary as proposed in Ext.P6 Form 12 notice and complete the same within such time as may be fixed by this Honble Court.

2. Ext.P7, the order which is impugned in this writ

petition is a communication issued by the 1st respondent rejecting the application made by the petitioner for survey and measurement of the property obtained by the petitioner under sale deed No.927/2014 registered at the Mallapally SRO. It is the case of the petitioner that the petitioner had purchased an extent of property from Late A.S.Mathew. It is submitted that since there were attempts by Late A.S.Mathew and others to trespass into and interfere with the rights of the petitioner over the property covered by the aforesaid registered sale deed, the petitioner filed an application for demarcating the property with the assistance of the Taluk Surveyor. Late A.S.Mathew [father of party respondents 4, 6 and 7 / husband of the 5 th respondent] had filed O.S.No.5/2016 on the file of the Sub Court, Thiruvalla putting forward a case that sale deed No.927/2014 was a document executed on the specific understanding that the said document is executed to secure a debt and there was an oral agreement that the property would be reconveyed after the debt was settled. The trial court dismissed the suit by Ext.P3

### **judgment prompting respondents 5, 6 and 7 (legal heirs of late**

A.S.Mathew) to approach this Court by filing RFA No.57/2023.

3. It is submitted by the learned Senior Counsel appearing for the petitioner and the learned Senior Counsel

### **appearing for the 5th respondent that initially there was an order**

of status quo passed by this Court in RFA No.57/2023 and later through order dated 08.06.2023 in I.A.No.1/2023, this Court had passed an order of injunction restraining the present writ petitioner from trespassing upon or alienating or encumbering the petition scheduled properties. The appellants in RFA No.57 of 2023, namely respondents 5, 6 and 7 were also restrained from committing any act of waste in the petition scheduled property till the final disposal of the appeal.

4. The learned Senior counsel appearing for the

petitioner would submit that even when there was an order of injunction operating against the writ petitioner in O.S.No.5/ 2016, which was on similar terms as the order passed by a Division Bench of this Court in I.A.No.1/2023 in RFA No.57/ 2023, this Court through Ext.P2 judgment had found that the said order cannot be treated as having any bearing on the application filed by the petitioner for survey, measurement and demarcation of the properties obtained by the writ petitioner in terms of the document registered as document No.927/2014 of Mallappally SRO. Therefore, there is absolutely no rhyme or reason to now deny to the petitioner the right to have the properties obtained by him surveyed, measured and demarcated as the nature of the order of injunction issued in I.A.No. 1/2023 in RFA No.57/2023 is practically identical to the order of injunction that was operating against the writ petitioner in O.S.No.5/2016.

5. Having heard the learned Senior Counsel appearing

for the petitioner and the learned Senior Counsel appearing for the 5th respondent, I am of the view that taking into consideration the tenor of the order of the Division Bench of this Court in I.A.No.1/2023 in RFA No.57/2023, the petitioner is presently not entitled to an order directing that there be a survey, measurement and demarcation of the properties with the assistance of the Taluk Surveyor. The reasons which compel me to take such a view are the following :

(i) A reading of the interim order of injunction in I.A.No.

in the RFA are continuing in possession of the property in question despite the fact that the writ petitioner has obtained title to the property by virtue of the stipulations contained in sale deed No.927/2014 and has also effected mutation in his name .

(ii) The order of the Division Bench in I.A.No. 1/2023 in RFA

No.57/2023 also suggests that this Court was prima facie inclined to accept the contentions taken by the appellants in that case (respondents 5, 6 and 7 herein) that they continue to be in possession and enjoyment of the property even after the execution of sale deed No.927/2014 of Mallappally SRO and that the evidence tendered by both sides in the suit was evenly poised. (iii) There is absolutely no

benefit that would accrued to the writ petitioner even if this Court were to permit the survey, measurement and demarcation of property obtained by the petitioner under document No.927/2014 of SRO Mallappally as the Division Bench has clearly prohibited the writ petitioner from entering into the property or alienating or encumbering the property in any manner.

I am therefore clearly of the view that while the learned Senior counsel for the petitioner may be the right in contending that the order of injunction may not operate as a bar in

### **conducting survey and measurement, the totality of the facts**

and circumstances of this case requires this Court to refuse relief in exercise of discretion. This writ petition fails and accordingly dismissed. It goes

### **without saying that no observation contained in this judgment**

will prejudice the writ petitioner in the appeal pending before this Court. Sd/-  
GOPINATH P. JUDGE DK APPENDIX OF WP(C) 20393/2023 PETITIONER  
EXHIBITS Exhibit P1 TRUE COPY OF THE BASIC TAX RECEIPT DATED  
15.05.2017 ISSUED TO THE PETITIONER Exhibit P2 TRUE COPY OF THE  
JUDGMENT IN WP(C).NO.16837/2016 DATED 13.06.2016 Exhibit P3 TRUE  
COPY OF THE JUDGMENT DATED 07.01.2023 IN OS.NO. 5/2016 OF THE  
COURT OF THE SUBORDINATE JUDGE, THIRUVALLA Exhibit P4 TRUE COPY  
OF THE ORDER IN IA.I/2023 IN OS.NO.5/2016 OF THE COURT OF THE  
SUBORDINATE JUDGE, THIRUVALLA Exhibit P5 TRUE COPY OF THE  
REPRESENTATION FILED BY THE PETITIONER BEFORE THE TAHSILDAR  
DATED 21.02.2023 Exhibit P6 TRUE COPY OF FORM 12 NOTICE DATED  
22.2.2023 ISSUED BY THE 2ND RESPONDENT TALUK SURVEYOR Exhibit P7  
TRUE COPY OF THE LETTER DATED 11.04.2023 OF TAHSILDAR/ 1ST  
RESPONDENT