

**Eldhose Vs. Yacob and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/722440](http://sooperkanoon.com/722440)

**Court :** Kerala

**Decided On :** Mar-06-2009

**Reported in :** AIR2009Ker104; 2009(1)KLJ837

**Judge :** K.T. Sankaran, J.

**Acts :** [Right to Information Act \(RTI\), 2005](#) - Sections 22 and 23; [Official Secrets Act, 1923](#); [Code of Civil Procedure \(CPC\) , 1908](#) - Order 16 - Rule 6; Civil Practice Rules - Rule 120

**Appeal No. :** W.P.(C) No. 3998 of 2009 (A)

**Appellant :** Eldhose

**Respondent :** Yacob and ors.

**Advocate for Def. :** George Abraham, Adv.

**Advocate for Pet/Ap. :** C. Dilip and; K.C. Kiran, Advs.

**Disposition :** Petition allowed

**Judgement :**

**K.T. Sankaran, J.**

1. The petitioner filed O.S. No. 475 of 2006, on the file of the Court of the Munsiff of Muvattupuzha, against the respondents for specific performance of an

agreement for sale, for fixation of boundaries and for permanent prohibitory injunction. The relief for specific performance relates to A schedule property, of which the first defendant was the owner. The plaintiff alleged that the first defendant transferred that property to defendants 2 and 3. The plaintiff B schedule property lies adjacent to A schedule, which belongs to the plaintiff and the first defendant. The case of the plaintiff is that the second defendant cut open a way through the plaintiff B schedule property. The prayer for fixation of boundary was made after amending the plaint, in these circumstances.

2. An Advocate Commissioner was appointed to inspect the property and to submit a report. The Taluk Surveyor who assisted the Commissioner stated that there was an acquisition of certain extent of land for Periyar Valley Irrigation Project (PVIP) canal from the eastern side of plaintiff B schedule property. The plaintiff states that the Taluk Surveyor stated that the measurement of the property can be made only with the help of the acquisition sketch prepared by the Revenue Authorities.

3. The petitioner filed I.A. No. 2,961 of 2008, praying for issuing a direction to the Tahsildar, Kothamangalam to produce before Court the acquisition sketch in respect of Survey No. 390/3 A/2 of Keerampara Village. This application was made by the petitioner to facilitate the inspection of the property by the Commissioner with the relevant acquisition sketch. The court below rejected the prayer in I.A. No. 2961 of 2008 by Ext. P8 order dated 4-9-2008, which is under challenge in this Writ Petition. The court below held that from 1-11-2007 onwards, the suit is being adjourned on several occasions for getting the Commissioner's report. It is also stated that the Commissioner has submitted that the relevant records were not made available by the plaintiff.

4. The request for summoning the document was rejected by the court below on the ground that the petitioner can very well obtain copy of the acquisition sketch under the Right to Information Act. This is not a valid reason on which the prayer made in the application could be rejected by the Court below. That a party is entitled to get copy of a particular document under the Right to Information Act is not a ground for rejecting his application for causing production of the documents

under Rule 6 of Order XVI of the Code of Civil Procedure. In a civil suit, if a party applies for issuing summons for production of documents, that has to be dealt with under the Code of Civil Procedure and not under the provisions of the Right to Information Act. The Right to Information Act, 2005 is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. It is aimed at an informed citizenry and transparency of information. Section 22 of the Right to Information Act provides that the provisions of the Act shall have effect notwithstanding anything consistent therewith contained in the [Official Secrets Act, 1923](#) (19 of 1923) and any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. Section 23 contains bar of jurisdiction of the courts. No court shall entertain any suit, application or other proceeding in respect of any order made under the Act and no such order shall be called in question otherwise than by way of an appeal under the Act. The Right to Information Act does not in any way curtail the powers of the civil court under the Code of Civil Procedure. Proceedings under the Right to Information Act cannot be the subject matter of scrutiny before a civil court. Even if a party to the suit has a right to obtain copy of a document under the Right to Information Act, that does not take away that person's right to apply under the provisions of the Code of Civil Procedure for issuing summons to the officer or authority to produce the document. Rule 6 of Order XVI of the Code of Civil Procedure provides that any person may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same. Rule 120 of the Civil Rules of Practice provides for production of records in the custody of a public officer other than a Court. For the aforesaid reasons, I set aside that part of the order by which the court below rejected the prayer in I.A. No. 2961 of 2008. The court below shall issue direction to the Tahsildar, Kothamangalam to produce the relevant records.

5. It is submitted by the learned Counsel appearing for the respondents that the Tahsildar, Kothamangalam has made it clear in Ext. P6 letter dated 25-09-2008,

addressed to the petitioner that the sketch is with the Special Tahsildar, PVIP, Perumbavoor. The application submitted by the petitioner was forwarded to the Special Tahsildar, PVIP. The petitioner states that no such office is in existence now. Whatever it may be, the Court could very well summon to Tahsildar, Kothamangalam to produce the relevant records. If the Tahsildar says that the records are in some other office, the court can issue summons to that officer to produce the records.

6. The Court below held in Ext. P8 order dated 4-9-2008 that the application for issue of a survey commission is not being closed and a last chance is being granted to the petitioner to make available the records. In the light of what is stated above, necessarily, the Court cannot close the commission application without summoning the relevant records as mentioned above.

The Writ Petition is allowed as above.

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