

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

FAO (RO).No. 101 of 2014 ()

**(AGAINST THE JUDGMENT IN AS.NO. 13/2011 OF SUB COURT, KOYILANDY
DATED 10-10-2013)**

**(AGAINST THE JUDGMENT IN OS.NO. 88/2008 OF MUNSIFF MAGISTRATE COURT,
PAYYOLI DATED 31-03-2011)**

APPELLANT/SUPPLEMENTAL 9TH RESPONDENT:

**BALAKRISHNAN,
S/O.KUNHIKANNAN NAIR, AGED 52 YEARS,KELOTH KANDY HOUSE,
CHANGAROTH AMSOM DESOM, KOILANDY TALUK,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.P.R.SREEJITH
SRI.M.PROMODH KUMAR**

**RESPONDENTS/APPELLANT AND RESPONDENTS 1 AND 8 AND SUPPL. 10 TO 12/ 3RD
DEFENDANT AND PLAINTIFF AND DEFENDANTS 1,2 AND 4 TO 8:**

- 1. MADEKKANDY SAROJINI AMMA,
W/O.KUTINARAYANAN NAIR, AGED 56 YEARS,
SWASTHAM, NANMIND AMSOM,
DESOM, KOZHIKODE TALUK - 673 613.**
- 2. PUTHIYEDATH SRI. PARADEVATHA TEMPLE TRUST COMMITTEE,
(SITUATED IN MEPPAYYUR AMSOM KEEZHPAYYUR DESOM,
KOYILANDY TALUK) REPRESENTED BY ITS PRESENT
SECRETARY CUM TREASURER P.CHANDRAN,
S/O.LATE KELAPPAN, PUNATHIL HOUSE, MEPPAYYUR AMSOM,
KEEZHPAYYUR DESOM, KOILANDY TALUK,
KOZHIKODE DISTRICT - 673 305**
- 3. PADMANABHAN NAIR,S/O.KRISHNAN NAIR,AGED 63 YEARS,
RESIDING AT SREEPADAM, AGRICULTURE,
MEPPAYYUR AMSOM, KEEZHPAYYUR DESOM, KOILANDY TALUK,
KOZHIKODE DISTRICT - 673 305.**
- 4. SREEDHARAN NAIR,S/O KRISHNAN NAIR,AGED 56 YEARS,
COOLIE, RESIDING AT KALARIYULLATHIL HOUSE, MEPPAYYUR AMSOM,
KEEZHPAYYUR DESOM, KOILANDY TALUK,
KOZHIKODE DISTRICT - 673 305.**

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5. IDAVANA NARAYANI AMMA, W/O RAMAN NAIR, AGED 82 YEARS,
MEPPAYYUR AMSOM, KEEZHPAYYUR DESOM,
KOILANDY TALUK, KOZHIKODE DISTRICT, (DIED) - 673 305
6. PUTHIYEDATH KUNHI KANNAN , S/O CHEKKOTTY, AGED 66 YEARS,
COOLIE MEPPAYYUR AMSOM,
KEEZHPAYYUR DESOM, KOILANDY TALUK,
KOZHIKODE DISTRICT - 673 305.
7. KOMAMBATH MADHAVAN NAIR, AGED 71 YEARS,
SWASTHAM, MEPPAYYUR AMSOM, KEEZHPAYYUR DESOM,
KOILANDY TALUK, KOZHIKODE DISTRICT - 673 305.
8. KOLLIYIL RAGHAVAN, S/O. NARAYANAN NAIR, AGED 51 YEARS,
CHERUVANNUR AMSOM, DESOM, KOILANDY TALUK - 673 305.
9. POTTANKANDY SIVANANDAN,
S/O AMMALU AMMA, AGED 66 YEARS,
SWASTHAM, MEPPAYYUR AMSOM AND DESOM,
KOILANDY - 673 305.
10. EDAVA DAMODARAN NAIR, S/O NARAYANI AMMA, AGED 63 YEARS,
RESIDING AT PUTHEYETATH,
MEPPAYYUR AMSOM DESOM, KOILANDY - 673 305
11. EDAVA SHIJI, D/O BALAN NAMBIAR, AGED 33 YEARS,
SWASTHAM, PUTHEYETATH,
MEPPAYYUR AMSOM DESOM, KOILANDY - 673 305
12. EDAVA SHINOJ, S/O BALAN NAMBIAR, AGED 33 YEARS,
SWASTHAM, PUTHEYETATH
MEPPAYYUR AMSOM DESOM, KOILANDY - 673 305

R1 BY ADVS. SRI.SANTHARAM.P
SMT.REKHA ARAVIND
R3 BY ADV. SRI.K.B.SAJEESH

THIS FIRST APPEAL FROM ORDER - REMAND ORDER HAVING COME UP
FOR ADMISSION ON 02-06-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

F.A.O(RO).No.101 of 2014

Dated this the 2nd day of June, 2015

JUDGMENT

The judgment of the Court of the Subordinate Judge of Koyilandy in A.S.No.13 of 2011 is impugned in this appeal. As per the said judgment, the court set aside the decision in O.S.No.88 of 2008 on the file of the Munsiff Court, Payyoly and remitted the said suit for fresh disposal in accordance with the directions contained in the judgment.

2. The suit referred to above is one for fixation of the boundaries of the properties held by a temple called "Puthiyedath Sree Paradevada temple". The suit was instituted by the Secretary of the temple trust. The temple is a private religious endowment. The properties of the temple are properties earmarked for the temple as per the terms of a partition deed namely partition deed No.1692/60

of Perambra Sub Registry. Items 1 and 3 properties in the partition deed are the properties earmarked for the temple. The said items of properties are the plaint schedule properties. The defendants in the suit are the parties to the said partition deed and their successors-in-interest. The case of the plaintiff is that the temple properties do not have well defined boundaries. The said case of the plaintiff is not disputed by the defendants also. As such, the trial court appointed an Advocate Commissioner to fix the boundaries of the plaint schedule properties based on partition deed No.1692/60. The Advocate Commissioner appointed by the court filed Ext.C3 report and Ext.C4 plan. As per Ext.C4 plan, the Advocate Commissioner fixed the boundaries of the plaint schedule properties. In Ext.C3 report, the Advocate Commissioner stated that the median measurements given in 'koles' in the partition deed do not tally with the extent of the properties shown in the document and therefore he has fixed the boundaries of the plaint schedule properties based on the extent shown in the

partition deed. In Ext.C4 plan, the temple properties are shown as plots I and VII. While fixing the boundaries of the properties allotted to the sharers based on extent, the Advocate Commissioner found an excess plot measuring 14 cents. That plot shown in Ext.C4 plan as plot No.IX. The trial court disposed of the suit directing fixation of the boundaries of the plaint schedule properties based on Ext.C4 plan.

3. The third defendant challenged the decision of the trial court in appeal. The essence of the contentions raised in the appeal was that the fixation of the boundaries of the properties made by the Advocate Commissioner based on the extent of the properties shown in the partition deed is incorrect and unsustainable. According to the third defendant, the excess land found by the Advocate Commissioner is part of the property allotted to her and to the fourth defendant and the same is their possession.

4. The appellate court took the view that the fixation of the boundaries of the properties made by the Advocate

Commissioner based on the extent shown in the partition deed cannot be held to be correct. Consequently, the appellate court set aside Ext.C3 report and Ext.C4 plan of the Commissioner and remitted the suit for fresh disposal with a direction to omit the properties which are shown to be in actual possession of any of the defendants. A member of the temple trust who got himself impleaded as additional ninth respondent in the appeal has come up in this appeal being aggrieved by the said decision of the appellate court.

5. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

6. The learned counsel for the appellant pointed out that the direction issued by the appellate court to omit the properties which are shown to be in actual possession of the defendants is unsustainable in law as the Advocate Commissioner is not competent to decide the questions relating to possession of properties.

7. True, the fixation of the boundaries of the properties including the plaint schedule properties made by

the Advocate Commissioner solely based on the extent shown in the partition deed cannot be held to be correct, especially when the median measurements shown in the document do not conform to the extent. At the same time, the Advocate Commissioner cannot be directed to fix the boundaries of the properties based on possession as the Advocate Commissioner is not competent to decide the disputed questions as to the possession of the properties. In the said circumstances, according to me, the right course open to the appellate court would have been to direct the Advocate Commissioner to measure and fix the boundaries of the properties based on the physical boundaries, if any, available, leaving the disputes relating to possession to be decided by the court. Such a course would have been necessary also for the reason that the plaintiff in this case has no case that there exists any excess land in the possession of the sharers or that any portion of the property earmarked for the temple is in the possession of others.

8. In the result, direction No.3 issued by the appellate

court in the impugned judgment is modified directing the Advocate Commissioner to measure and fix the boundaries of the properties based on the physical boundaries, if any, available, leaving the disputes relating to possession to be decided by the court. In all other respects, the impugned judgment is confirmed. Once the Advocate Commissioner files the report as directed above, the trial court shall decide and determine the boundaries of the respective properties based on the pleadings and evidence in the case. The parties are directed to appear before the trial court on 30.6.2015.

The appeal is disposed of as above.

P.B.SURESH KUMAR, JUDGE.

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