

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

OP(C).No. 1525 of 2012 (O)

OS 2020/2007 OF ADDITIONAL MUNSIFF COURT, THRISSUR
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PETITIONER(S):

**KRISHNAKUMAR @ KUNJUKUTTAN, AGED 73 YEARS,
S/O. LATE KITTU, KANIYAMPARAMBIL HOUSE,
HOUSE NO.14/331, MANALUR VILLAGE, THRISSUR DISTRICT.**

**BY ADVS.SRI.HARISANKAR V. MENON
SRI.MAHESH V.MENON**

RESPONDENT(S):

- 1. KUNJUMOL (DIED),
D/O. LATE KITTU, KINIYAMPARAMBIL HOUSE,
MANALUR VILLAGE, THRISSUR DISTRICT- 680 589,
COMMERCIAL TAX OFFICER.**
- 2. LATHIKA,
W/O. KANIYAMPARAMBIL LATE KRISHNAN, MANALUR VILLAGE,
THRISSUR DISTRICT - 680 589.**
- * 3. LINTIN,
W/O. KANIYAMPARAMBIL LATE KRISHNAN, MANALUR VILLAGE,
THRISSUR DISTRICT - 680 589.**
- * 4. LINSIN,
W/O. KANIYAMPARAMBIL LATE KRISHNAN, MANALUR VILLAGE
THRISSUR DISTRICT - 680 589.**
- * 5. MADANAMOHANAN,
S/O. KANIYAMPARAMBIL KUNJU, MANALUR VILLAGE
THRISSUR DISTRICT - 680 589.**
- 6. RAMAN,
S/O. LATE KANIYAMPARAMBIL KITTU, MANALUR VILLAGE
THRISSUR DISTRICT - 680 589.**

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- * 7. AMBIKA,
W/O. KANIYAMPARAMBIL MADANA MOHANAN, MANALUR VILLAGE
THRISSUR DISTRICT - 680 589.
 - * 8. VIJAYA,
W/O. KANIYAMPARAMBIL HARIDAS, MANALUR VILLAGE,
THRISSUR DISTRICT - 680 589.
 - * CAUSE TITLE CORRECTED
 - 3. LINTIN,
W/O. KANIYAMPARAMBIL LATE KRISHNAN, MANALUR VILLAGE,
THRISSUR DISTRICT - 680 004.
 - 4. LINSIN,
W/O. KANIYAMPARAMBIL LATE KRISHNAN, MANALUR VILLAGE
THRISSUR DISTRICT - 680 004.
 - 5. MADANAMOHANAN,
S/O. KANNAMPARAMBIL KUNJAN, MANALUR VILLAGE
THRISSUR DISTRICT - 680 004.
 - 7. AMBIKA,
W/O. KANNAMPARAMBIL MADANAMOHANAN, MANALUR VILLAGE
THRISSUR DISTRICT - 680 004.
 - 8. VIJAYA,
W/O. KARMAKKIL HARIDAS, MANALUR VILLAGE,
THRISSUR DISTRICT - 680 004.
 - * CAUSE TITLE CORRECTED AS PER THE ORDER
DTD.30.9.2013 IN IA.12740/2013.
 - * ADDITIONAL R9 IMPEADED
 - 9. KRISHNANKUTTY, S/O.KITTU,
KANIYAMPARAMBIL HOUSE, MANALUR VILLAGE,
THRISSUR DISTRICT.
 - * IS IMPEADED AS ADDITIONAL R9 AS PER ORDER
DTD.20.10.2014 IN IA.12780/2013.
 - R7 BY ADVS. SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN
SRI.P.TGIRIJAN
SMT.USHA NARAYANAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: COPY OF JUDGMENT IN OS 549/1978 BEFORE SUB COURT, THRISSUR IN
OP 821/2010 DT. 27-2-1980.**

**EXT.P1A: COPY OF CONSOLIDATED SKETCH APPENDED TO THE COMPROMISE IN
O.S. 549/1978 DT. 27-2-1980.**

**EXT.P2: COPY OF PLAINT IN O.S. 2020/2007 BEFORE THE 1ST ADDITIONAL MUNSIFF
COURT, THRISSUR DT. 28-7-2007.**

**EXT.P3: COPY OF COMMISSION REPORT IN O.S. 2020/2007 BEFORE THE
1ST ADDITIONAL MUNSIFF COURT, THRISSUR DT. 13-1-2009.**

**EXT.P3A: COPY OF SKETCH ATTACHED TO COMMISSION REPORT IN O.S. 2020/2007
BEFORE THE 1ST ADDITIONAL MUNSIFF COURT, THRISSUR DT. 13-1-2009.**

**EXT.P4: COY OF DEPOSITION OF SURVEYOR IN O.S. 2020/2007 BEFORE THE
1ST ADDITIONAL MUNSIFF COURT, THRISSUR DT. NIL.**

**EXT.P4A: COPY OF DEPOSITION OF COMMISSIONER IN O.S. 2020/2007 BEFORE THE
1ST ADDITIONAL MUNSIFF COURT, THRISSUR DT. 30-3-2012.**

**EXT.P5: COPY OF I.A. NO. 4200/2012 IN O.S. 2020/2007 BEFORE THE 1ST ADDITIONAL
MUNSIFF COURT, THRISSUR DT.**

**EXT.P6: COPY OF I.A. NO. 4200/2012 AND 4201/2012 IN O.S. 2020/2007 BEFORE THE
1ST ADDITIONAL MUNSIFF COURT, THRISSUR.**

**EXT.P7: TRUE COPY OF THE COUNTER IN IA.1073/2007 IIN OS.2020/2007 BEFORE THE
1ST ADDITIONAL MUNSIFF COURT, THRISSUR FILED BY THE DEFENDANTS
NO.4,6,7 AND 9 DTD.30.11.2010.**

**EXT.P8: TRUE COPY OF AFFIDAVIT FILED BY THE DEFENDANTS NO. 1 TO 4, 6 AND 7
IN OS.NO.2020/2007 BEFORE THE 1ST ADDITIONAL MUNSIFF COURT,
THRISSUR DTD.29.9.2010.**

**EXT.P9: TRUE COPY OF IA.NO.5092/2009 IN IA.NO.10931/2007 IN OS.NO.2020/2007
BEFORE THE 1ST ADDITIONAL MUNSIFF COURT, THRISSUR FILED BY THE
5TH DEFENDANT DTD.17.9.2009.**

**EXT.P10: TRUE COPY OF IA.NO.12957/2010 IN OS.NO.2020/2007 BEFORE THE
1ST ADDITIONAL MUNSIFF COURT, THRISSUR DTD.30.11.2010.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B.KEMAL PASHA, J.

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O.P.(C).No.1525 of 2012

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Dated this the 10th day of July, 2015

J U D G M E N T

Heard the learned counsel for the petitioner and the learned counsel for the 7th respondent.

2. Exhibit P5 I.A.No.4200 of 2012 was filed by the plaintiff in O.S.No.2020 of 2007. The suit is one for fixation of boundaries of the plaint schedule property based on Exhibit P1 partition decree passed in the partition suit of 1978. It has come out that the plaintiff and the witnesses were examined including the Commissioner, who has prepared the report and produced the survey plan along with it. Thereafter, the defendant and witnesses were examined. The matter was heard in part also. It was at that juncture Exhibit P5 I.A. was filed for getting the Commissioner's report and plan remitted to the Commissioner for executing the commission warrant afresh.

I.A.No.420 of 2012 was also filed for getting the evidence re-opened. The court below, through Exhibit P6 order, has dismissed both the I.As. and the said order is under challenge.

3. According to the learned counsel for the petitioner, during the cross-examination, in box, the Commissioner has deposed that he had not measured out the entire properties covered by the earlier decree; whereas, he had measured out the property of the plaintiff alone. It is a suit for fixation of boundary based on an earlier sketch prepared in Exhibit P1 partition decree. In such a case, the Commissioner ought to have necessarily measured out the entire properties covered by the said sketch. The exercise made by the Commissioner has become futile, when he has specifically admitted in box that he has not measured out the entire properties; whereas he has measured out the plot allotted to the petitioner alone. In such a case, necessarily the matter has to be remitted to the Commissioner for fresh execution of the commission warrant. Therefore, Exhibit P6 order passed by the court below is liable to be set aside.

4. In the result, Exhibit P6 order stands set aside. Exhibit P5 I.A. as well as I.A.No.4201 of 2012 stand allowed. It has been reported by the parties that the earlier Commissioner, who had executed the commission warrant had stopped practice and he is not practising at present. Therefore, the court below shall appoint a fresh Commissioner for executing the commission warrant. The petitioner shall pay the necessary Batta as may be ordered by the court below. The court below shall expedite the proceedings as it is a suit of 2007.

This Original Petition (Civil) is allowed as above.

Sd/-

B.KEMAL PASHA
JUDGE