

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP(C).No. 1774 of 2012 (O)

AGAINST THE ORDER IN OS 56/2010 OF MUNSIFF MAGISTRATE COURT, PONNANI

PETITIONER/DEFENDANT :

**KUNDUKULANGARA CHANDRAN
S/O.KONNI, KUNDUKULANGARA HOUSE, VATTAMKULAM P.O.,
PIN - 679 578, PONNANI TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT/PLAINTIFF :

**KUNDUKULANGARA KRISHNADAS
S/O.VELU @ APPUKUTTY, KUNDUKULANGARA HOUSE
VATTAMKULAM P.O., PIN 679 578, PONNANI TALUK
MALAPPURAM DISTRICT.**

BY ADV. SRI.A.KRISHNAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. A TRUE COPY OF THE PLAINT IN OS 56/2010 BEFORE THE MUNSIFF-MAGISTRATE COURT, PONNANI DATED 22.01.2012.**
- EXHIBIT P2. A TRUE COPY OF THE WRITTEN STATEMENTS FILED BY THE PETITIONER IN OS 56/2010 BEFORE THE MUNSIFF MAGISTRATE COURT, PONNANI DATED 20.07.2010.**
- EXHIBIT P3. A TRUE COPY OF THE EXPARTE COMMISSIONERS REPORT AND PLAN DATED 05.04.2010 IN OS 56/2010 BEFORE MUNSIFF MAGISTRATE COURT, PONNANI.**
- EXHIBIT P4. A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER HEREIN TO REMIT THE EXPARTE COMMISSIONERS REPORT IN OS 56/2010 BEFORE MUNSIFF MAGISTRATE COURT, PONNANI, DATED 07.04.2010.**
- EXHIBIT P5. A TRUE COPY OF THE COMMISSIONERS REPORT DATED 07.07.2010 IN OS 56/2010 BEFORE MUNSIFF MAGISTRATE COURT, PONNANI.**
- EXHIBIT P6. A TRUE COPY OF THE ORDER DATED 28.05.2012 IN OS 56/2010 BEFORE THE MUNSIFF MAGISTRATE COURT, PONNANI.**

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

SUNIL THOMAS, J.

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O.P(C).No.1774 of 2012

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Dated this the 18th day of August, 2015

JUDGMENT

The defendant in a suit for injunction in O.S.No.56 of 2010 of the Munsiff-Magistrate Court, Ponnani is the petitioner herein.

2. The suit was laid by the plaintiff claiming a customary right of way through one of the properties which was the subject matter of the suit. The defendant appeared and filed written statement. When the matter was taken for trial, the defendant attempted to let in evidence, certified copies of two title deeds, the marking of which was objected to by the learned counsel for the petitioner. The court below by Ext.P6 impugned order, dated 28.05.2012, refused to mark the documents by a detailed order referring to the legal provisions involved, holding that it cannot be marked in evidence without a formal proof relating it. This is challenged in this original petition.

3. Heard both sides.

3. Learned counsel for the petitioner relying on Section 57(5) of the Registration Act contended that certified copies of the documents are issued as contemplated under the law and are admissible in evidence. Section 65 of the Indian Evidence Act refers to the cases wherein secondary evidence relating to the document can be relied on. He pressed into service Section 65 (e) and (f) which deals with situations wherein the certified copies of the document can be marked. Per contra, learned counsel for the plaintiff/respondent contended that it is not a public document as contemplated under Section 74 of the Indian Evidence Act.

4. I cannot agree with the reasoning of the court below. The certified copies of the title deeds are copies of the public documents kept in the Registrar's office under a statutory authority under the sovereign powers of the State. That being so, the document, the certified copy of which is sought to be dealt in evidence, is a document admissible in evidence under the Indian Evidence Act, can be marked in evidence without examining the concerned person. Marking of the document does imply that still evidentiary value of the document can be

independently assailed by the plaintiff.

5. I find no merit in the impugned order. The impugned order is set aside and the court below shall proceed with the trial after marking both the documents in accordance with law.

Original petition is allowed as above.

Sd/-

SUNIL THOMAS
Judge

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