

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. 109 of 2013 (O)

AGAINST THE ORDER DATED 05.12.2012 IN I.A.NO.2243/2011 IN O.S.125/2008
OF the MUNSIF COURT, PARAPPANANGADI

PETITIONERS:- (PETITIONERS/PLAINTIFFS):

1. PUTHAN VEETIL SUBRAMANIAN AGED 26 YEARS
S/o.UNNAMAN
KERALADHEESWARAPURAM AMSOM DESOM, KATTELILANGADI
TANUR P O, K PURAM, MALAPPURAM DISTRICT
2. SUJITH, S/o.SUBRAMANIAN, RESIDING AT - DO-
3. SAJEEV S/o.SUBRAMANIAN, RESIDING AT - DO -

BY ADV. SRI.T.SETHUMADHAVAN

RESPONDENT: (RESPONDENT/DEFENDANT)

OTTAYIL MARIYAMMA, W/o.PARAPPARA ABDU
OMACHAPUZHA AMSOM, PERINCHERI DESOM
P O , OMACHAPUZHA TIRUR TALUK - 676 320

BY ADV. SRI.T.KRISHNAN UNNI (SR.)
BY ADV. SRI.SAJU.S.A
BY ADV. SRI.V.CHANDRASEKHARAN

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

APPENDIX

PETITIONERS' EXHIBITS:

EXT P1 : TRUE COPY FO the REPORT SUBMITTED BY the ADVOCATE COMMISSIONER DATED 11.08.2010

EXT P1(a): TRUE COPY OF the PLAN SUBMITTED BY the ADVOCATE COMMISSIONER DATED 11.08.2010

EXT P2 : TRUE COPY OF AFFIDAVIT ACCOMPANYING I.A.NO.75/2011 FILED BY THE PETITIONERS

EXT P3 : TRUE COPY OF THE REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 15.07.2011

EXT P3(a): TRUE COPY OF THE PLAN SUBMITTED BY the ADVOCATE COMMISSIONER DATED 15.07.2011

EXT P4 : TRUE COPY OF the AFFIDAVIT FILED BY THE PETITIONERS AS I.A.NO.2243/2011 DATED 09.11.2011

EXT P5 : TRUE COPY OF AFFIDAVIT ACCOMPANYING I.A.NO.767/2012 FILED BY the PETITIONERS DATED 26.03.2012

EXT P6 : TRUE COPY OF the REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 27.09.2012

EXT P6(a): TRUE COPY OF the PLAN SUBMITTED BY the ADVOCATE COMMISSIONER DATED 27.09.2012

EXT P7 : TRUE COPY OF ORDER OF the MUNSIF COURT, PARAPPANANGADI IN I.A.2243/2011 IN O.S.NO.125/2008 DATED 05.12.2012

EXT P8 : TRUE COPY OF THE ORDER SHEET IN I.A.NO.2243/2011 IN O.S.125/2008

RESPONDENT'S EXHIBITS: NIL

True Copy /

P.A to Judge

SUNIL THOMAS, J.

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O.P(C).No.109 of 2013

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Dated this the 18th day of August, 2015

JUDGMENT

The plaintiffs/petitioners in I.A.No.2243 of 2011 in O.S.No.125 of 2008 of the Munsiff Court, Parappanangadi are aggrieved by the rejection of the plaintiffs application for remitting the commissioner's report for further enquiry.

2. The suit was laid by the petitioners herein for fixation of the boundary of their 5 cents of property in survey No.323/6 of Rayirimangalam Village in Tirur Taluk. A temporary injunction was granted, which, according to the plaintiffs, was violated by the defendant in the course of the proceedings. The defendant appeared and filed a written statement. Pending suit, Commissioners were deputed by the Court who have inspected the property and submitted Commission reports. Ultimately, a survey commission was taken out and the Commissioner has filed Exts.P1 and P1(a) report and sketch.

3. The plaintiffs filed an application thereafter as I.A.No.2243 of 2011, contending that the Advocate commissioner

failed to notice all the matters which are relevant for identification and reporting. An objection was filed and after hearing, the court below by the impugned order dismissed the application. The reasoning given by the court below was that there were already four commission reports in the matter and three were undertaken with the assistance of Surveyor and detailed plans prepared. The Commission reports were remitted on previous occasions on the application of the petitioners. Even though the matter was included in the list for trial, on few occasions, petitions were filed to remit the matter to the Advocate Commissioner. On this premise, the application was dismissed by the court below. The above order is under challenge in this appeal.

4. Heard both sides.

5. It is pertinent to note that the plaintiffs had filed detailed application wherein the various omissions, which according to the petitioners, were committed by the Commissioner were paraphrased. Among the various objections, one appears to be a valid contention. According to the plaintiffs, the property was purchased by title deed No.770 of 1979.

However, the Advocate Commissioner seems to have measured the property not with reference to the latest document by which the property was purchased by the plaintiffs but relying on one of the earlier title deeds which had a larger extent. Evidently, for the purpose of fixation of the southern boundary which was in dispute, a measurement of the property with reference to the latest title deed is required. Along with the application for remitting the Commissioner's report, six points are specifically mentioned. Consequently, Commissioner report has to withstand the objections raised by either of the parties. In a suit for fixation of boundary, a correct, proper and valid measurement of the property may be essential for a due consideration of the dispute. In the above circumstance, especially when the disputed boundary is not correctly brought on record, it may not help the plaintiffs in establishing their case.

6. Considering this fact, I feel that the court below was not justified in rejecting the application without considering the various points raised in the application, only on the ground that there were four commission reports available on record and that

the present application was filed belatedly. Impugned order is not hence sustainable. I feel that one more opportunity should have been granted to the petitioners in the interest of justice and to put an end to the entire litigation. It was clarified by the learned counsel for the plaintiffs that the objections regarding the Commission report was confined to the six points referred to in the I.A. dated 09.11.2011. However, some of the points therein may not be essential for the effective determination of the issues involved. The points which are essential for the determination of the issues involved in the suit is a matter to be considered by the trial court. Definitely, point No.6 appears to be a matter which is to be considered by the Advocate Commissioner. The court below shall give an opportunity of being heard to both sides and decide which amongst the point Nos.1 to 5 are to be noted by the Advocate Commissioner. The court below shall thereafter remit the matter to the Advocate Commissioner to report on the issues as directed by the court below.

O.P. is allowed. Impugned order in Ext.P8 is set aside. The court below shall consider I.A.No.2243 of 2011

afresh and pass fresh orders in the light of the above. The parties shall co-operate with the measurement of the property and court below shall make every endeavour to dispose of the suit at the earliest, considering the pendency of the suit since 2008.

Sd/-

SUNIL THOMAS
Judge

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