

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

OP(C).No. 57 of 2015 (O)

(I.A.NO.1231/2014 IN OS.NO. 363/2012 OF MUNSIFF COURT, KATTAPPANA)

PETITIONER :

**SOOSAMMA JAMES, AGED 51 YEARS,
W/O. THOMAS, AYLUKUNNEL HOUSE,
VELLAYAMKUDY, KATTAPPANA, IDUKKI DISTRICT.**

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT :

**JESTIN, AGED 36 YEARS,S/O. JOSE,
KUTTIYANICKAL HOUSE, VELLAYAMKUDY.P.O.,
KATTAPPANA, IDUKKI DISTRICT-685 515**

BY ADV. SRI.A.SHAFEEK (KAYAMKULAM)

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1. COPY OF THE COMMISSION REPORT IN OS.NO. 363/2012 OF THE MUNSIF COURT, KATTAPPANA.
- P2. COPY OF THE ORDER DATED 21-11-14 IN I.A. 1231/14 IN OS.NO.363/14 OF THE MUNSIF'S COURT, KATTAPPANA.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

sts

P. BHAVADASAN, J.

O.P.(C). No. 57 of 2015

Dated this the 6th day of February, 2015.

JUDGMENT

In a suit for mandatory injunction, a Commissioner was appointed and the Commissioner filed a report saying that he is unable to verify certain matters without the aid of an expert. The petitioner filed an application seeking for assistance of an expert. That petition was dismissed. That order is under challenge.

2. Learned counsel for the respondent points out that in the Commission application filed by the petitioner, matters which are extraneous for consideration have also been sought for.

3. In this proceedings, we are only concerned with whether an expert ought to have been appointed in the light of the report filed by the Commissioner stating that he is unable to note certain facts for want of expert's assistance.

4. It is not in dispute that those factors are essential for the disposal of the suit. In the light of the said fact, the petition ought to have been allowed.

This Original Petition is allowed and the impugned order is set aside and the court below is directed to pass orders making available the assistance of an expert to the Commissioner for ascertaining matters which the Commissioner has stated that he could not ascertain without the aid of an expert as per Ext. P1 report.

sb.

P. BHAVADASAN,
JUDGE