

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.BHAVADASAN**

**MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936**

**OP(C).No. 86 of 2015 (O)**  
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**IA. NO.1794/2014 AND IA. NO.2935/2014 IN O.S. NO.294/2008 OF ADDITIONAL  
SUB COURT, THALASSERRY.**  
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**PETITIONER(S):**  
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- 1. M/S.M.C.LAKSHMANAN & CO-ENGINEERING  
CONTRACTORS, HOSPITAL ROAD,  
THALASSERY-670 101, REPRESENTED BY ITS  
MANAGING PARTNER M.K.RAMESH KUMAR.**
- 2. M.K. RAMESH KUMAR, S/O GOVINDAN NAMBIAR,  
AGED 52 YEARS, M.C.LAKSHMANAN &  
CO-ENGINEERING CONTRACTORS,  
HOSPITAL ROAD, THALASSERY-670 101.**

**BY ADVS.SRI.G.S.REGHUNATH,  
SRI.P.C.HARIDAS.**

**RESPONDENT(S):**  
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- 1. GEETHA,  
W/O. LATE PRASHANTH, S.B. COLONY, III STREET,  
MADURAI, TAMILNADU-625 001.**
- 2. M.K.JINESH,  
S/O. LATE PRASHANTH, S.B. COLONY, III STREET,  
MADURAI, TAMILNADU-625 001.**
- 3. MRS. NIRLA LAKSHMANAN,  
W/O LATE M.C.LAKHMANAN, MITHILA, XXXXX/277,  
NEAR VENUE CORNER, THALASSERY, KANNUR ROAD,  
THALASSERY-670 101.**
- 4. MRS. SEEMA GINA CHANDRAN,  
D/O. LATE M.C.LAKHMANAN, MITHILA, XXXXX/277,  
NEAR VENUE CORNER, THALASSERY, KANNUR ROAD,  
THALASSERY-670 101.**

**R1 BY ADV. SRI.JOBY JACOB PULICKAKUDY.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 19-01-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**rs.**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S.NO.294/2008 ON THE FILES OF THE SUB COURT, THALASSERRY.
- EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS IN O.S.NO.294/2008 ON THE FILES OF THE SUB COURT, THALASSERRY.
- EXHIBIT P3: TRUE COPY OF THE AGREEMENT DATED 18.06.2003.
- EXHIBIT P4: TRUE COPY OF THE SUPPLEMENTARY AGREEMENT DATED 15.04.2004.
- EXHIBIT P5: TRUE COPY OF THE APPROVED PLAN OF THE BUILDING.
- EXHIBIT P6: TRUE COPY OF THE PLAN SUBMITTED WITH THE COMPLETION CERTIFICATE.
- EXHIBIT P7: TRUE COPY OF THE COMMISSION REPORT WITH VALUATION STATEMENT AND ESTIMATE.
- EXHIBIT P8: TRUE COPY OF THE AFFIDAVIT ACCOMPANYING THE PETITIONER TO SET ASIDE EXHIBIT P7 COMMISSION REPORT.
- EXHIBIT P9: TRUE COPY OF THE COMMISSION REPORT WITH VALUATION STATEMENT AND ESTIMATE.
- EXHIBIT P10: TRUE COPY OF THE I.A.NO.1794/2014.
- EXHIBIT P11: TRUE COPY OF THE AFFIDAVIT FILED BY THE 1ST RESPONDENT AGAINST EXT.P10 REPORT.
- EXHIBIT P12: TRUE COPY OF THE COUNTER STATEMENT TO EXT.P10 FILED BY THE RESPONDENTS 1 AND 2.
- EXHIBIT P13: TRUE COPY OF THE I.A.NO.2935/2014 FILED BY THE RESPONDENTS 1 AND 2.
- EXHIBIT P14: TRUE COPY OF THE COUNTER TO EXT.P13.
- EXHIBIT P15: TRUE COPY OF THE COMMON ORDER DATED 26.11.2014 IN I.A. NOS. 1794/14 AND 2935/14 OF THE SUB COURT, THALASSERRY.

**RESPONDENT'S EXHIBITS:-**

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

**P.BHAVADASAN, J.**

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O.P.(C) No. 86 of 2015  
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Dated this the 19<sup>th</sup> day of January, 2015

**J U D G M E N T**

On 15.01.2015, this Court passed an interim order suggesting certain measures to both the parties.

2. The learned counsel appearing for the petitioner who is the defendant in the suit submits that as a way out that his prayer for issuance of a Commission to note the cost of demolition which he claims to have undertaken in order to put up the original construction as per the plan and which he had to pulled down as a result of the alteration of structure as requested by the respondent may be ascertained by a Commission as per Ext.P10. It is also pointed out that the respondent may be directed to furnish the bank guarantee for the counter claim amount. It is also submitted by the learned counsel appearing for the petitioner that they have no objection in the respondent carrying out the rest of the construction and taking possession of the building without

prejudice to the contentions in the suit.

3. The learned counsel appearing for the respondent had only one objection to this proposal. According to him, it may not be practically possible to ascertain the value of demolished structures in view of the fact that they are no more visible and available in the place. The learned counsel therefore contended that it may be specified that only if it is possible for the Commissioner to ascertain same, then only he need to assess the cost of the demolished portion of the construction.

4. After having heard the learned counsel on both sides it is ordered as follows:

a) The same Commissioner is to be deputed to ascertain the matters specified in Ext.P10, provided, it is possible to do so. The Commissioner shall conduct the inspection as early as possible, at any rate, within a period of four weeks from the date of receipt of a copy of this judgment by the lower court. It is also made clear that the

respondent will not be entitled to alienate the property during the pendency of the suit as the respondent may stake a claim over the same. The Commissioner batta is fixed at ₹ 5,000/- and if he

b) The respondent shall furnish the bank guarantee for the counter claim amount within two weeks of the filing of the report.

c) Thereafter, the respondents shall be entitled to undertake the balance construction at his own cost and risk and also to occupy the same after construction.

This will be the modification of the order of the court below which is under challenge. The construction by the respondent shall be in accordance with the plan already sanctioned for which permit has been granted.

This Original petition is disposed of accordingly.

**P.BHAVADASAN  
JUDGE**