

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

OP(C).No. 104 of 2015 (O)

(I.A.NO.49/2015 & 50/2015 IN O.S.NO.121/2010 OF MUNSIFF COURT, TALIPARAMBA)

PETITIONER/PETITIONER/PLAINTIFF:

VANNARATH GOPALAN,
S/O.LATE P.V.NARAYANAN, AGED 55 YEARS,
VANNARATH HOUSE, KEECHERI,P.O.PAPPINISSERY, KANNUR.

BY ADVS.SRI.V.T.MADHAVANUNNI
SRI.V.A.SATHEESH
SRI.J.ABHILASH

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

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1. VANNARATH KUNHIKANNAN,
S/O.LATE P.V.NARAYANAN, AGED 59 YEARS,
VANNARATH HOUSE, KOLATHUVAYAL,
P.O.ANCHAMPEEDIKA, KANNUR.
 2. VANNARATH KRISHNAN, S/O.LATE P.V.NARAYANAN,
AGED 51 YEARS, "PALLAVAM", KEECHERI,
P.O.PAPPINISSERY, KANNUR.
 3. T.DEVI AMMA, W/O.KOZHUTHALA VEETIL DAMODARAN,
AGED 65 YEARS, KOZHUTHALA VEEDU, KEECHERI,
P.O.ANCHAMPEEDIKA, KANNUR.
 4. PAYYARATTA VEETIL LAKSHMIKUTTY,
D/O.LATE KAITHALA KELU, AGED 51 YEARS,
PAYYARATTA VEEDU, NR. VAYALILE KOTTAM,
P.O.ANCHAMPEEDIKA, KANNUR.
 5. KADAN PUTHEN VEETIL CHANDRAN,
S/O.LATE K.P.PARUKUTTY AMMA, AGED 49 YEARS,
"KRISHNA VILAS", THERUVATHU, P.O.KANNADIPARAMBA,
KANNUR DISTRICT-670 604
 6. PAYYARATTA UCHIRA AMMA (DIED),
D/O.LATE PARVATHI AMMA, AGED 78 YEARS,
PAYYARATTA VEEDU, NR. VAYALILE KOTTAM,
P.O.ANCHAMPEEDIKA, KANNUR.

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7. KADAN PUTHEN VEETIL KAMALAKSHI AMMA,
D/O.LATE K.P.PARUKUTTY AMMA, AGED 59 YEARS,
KADAN PUTHEN VEEDU, NR. VAYALILE KOTTAM,
P.O.ANCHAMPEEDIKA, KANNUR.
8. PAYYARATTA VEETIL GOPALAN,
S/O. PAYYARATTA UCHIRA AMMA, AGED 48 YEARS,
PAYYARATTA VEEDU, NR. VAYALILE KOTTAM,
P.O.ANCHAMPEEDIKA, KANNUR.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE PLAINT IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P2 COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS NO.1 AND 2 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P3 COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS NO.3 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P4 COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS NO.5 & 7 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P5 COPY OF THE REPORT SUBMITTED BY THE COMMISSIONER O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P6 COPY OF THE AFFIDAVIT IN SUPPORT OF THE PETITION IN I.A.NO.49/2015 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P7 COPY OF THE COUNTER FILED BY THE RESPONDENT NO.1 AND 2 IN I.A.NO.49/2015 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P8 COPY OF THE AFFIDAVIT IN SUPPORT OF THE PETITIONER IN IA.NO.50/2015 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P9 COPY OF THE COUNTER FILED BY THE RESPONDENT NO.1 AND 2 IN I.A.NO.50/2015 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA.
- P10 COPY OF THE COMMON ORDER IN I.A.NO.49/2015 AND 50/2015 IN O.S.NO.121/2010 OF MUNSIF COURT, TALIPARAMBA. DATED 12/1/2015.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.BHAVADASAN, J.

O.P.(C) No. 104 of 2015

Dated this the 14th day of January, 2015

J U D G M E N T

Aggrieved by Ext.P10 order, the petitioner has come up before this Court under Article 227 of the Constitution of India.

2. The suit was one for fixation of boundaries of the plaint schedule property and for a mandatory injunction. A Commission was taken out and the Commissioner filed his report as early as in 2010. Nothing transpired thereafter. Long thereafter, the case was listed for trial on 04.11.2014 and thereafter on 06.01.2015, a petition was preferred to remit the Commissioner's report. The court below rightly declined to grant the relief since it felt that it was nothing but a ploy adopted to remove the case from the list.

3. The learned counsel appearing for the petitioner contended that the Commissioner's report as it now stands is of little use and on the basis of the available

Commissioner's report, the plaintiff may not be able to prove his case. It is also contended that no prejudice is caused to other side by remitting the Commissioner's report.

4. The question is not one of prejudice to the other side. But the question is one of considerable delay in moving the court below for remitting the Commissioner's report. It is seen from the records that the Commissioner filed his report in 2010 and all this while, the petitioner went to sleep. He suddenly wakes up when the suit is listed for trial and filed a petition. Motive is obvious. That cannot be encouraged.

However, this Original Petition is disposed of directing that in case during trial, it is found that Commissioner's report is defective, the petitioner will be free to apply for a fresh Commission.

**P.BHAVADASAN
JUDGE**

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