

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

OP(C).No. 4193 of 2012 (O)

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AGAINST THE ORDER/JUDGMENT IN OS 200/2012 OF PRINCIPAL MUNSIF
COURT, KOCHI
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PETITIONER(S):

- 1. BHAMA AGED 55 YEARS
W/O. LATE JNANA SUNDARAN, ANAMURI PARAMBIL
PANAMBU KADU, ERNAKULAM.**
- 2. GANESHAN AGED 35 YEARS
S/O. LATE JNANA SUNDARAN, ANAMURI PARAMBIL
PANAMBU KADU, ERNAKULAM.**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.S.VAIDYANATHAN
SRI.P.PRIJITH**

RESPONDENT(S):

- 1. PRAKASHAN, AGED 72 YEARS
S/O. VELU, THIRUNALATH PARAMBU, PALLURUTHY
ERNAKULAM-682 006.**
- 2. MANIKUTTAN , AGED 35 YEARS
S/O. PRAKASAN, THIRUNALATH PARAMBU, PALLURUTHY
ERNAKULAM-682 006.**

**R2 BY ADV. SRI.VARGHESE PARAMBIL
R2 BY ADV. SRI.ALBERT JOSEPH**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS :

EXHIBIT.P1 : TRUE COPY OF PLAINT AS OS NO.200/2012 FILED BY THE RESPONDENTS BEFORE THE PRINCIPAL MUNSIF COURT, KOCHI.

EXHIBIT.P2 : TRUE COPY OF WRITTEN STATEMENT WITH COUNTER CLAIM IN OS NO.200/2012 FILED BY THE PETITIONER BEFORE THE PRINCIPAL MUNSIF COURT, KOCHI.

EXHIBIT.P3 : TRUE COPY OF DOCUMENT NO.712/1982 OF KOCHI SRO.

EXHIBIT.P4 : TRUE COPY OF REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER IN IA NO.1538/2012 IN OS NO.200/2012.

EXHIBIT.P5 : TRUE COPY OF ORDER IN IA NO.1539/2012 IN OS NO.200 OF THE PRINCIPAL MUNSIF COURT, KOCHI.

EXHIBIT.P6 : TRUE COPY OF IA NO.2478(a)/2012, DTD.3.11.2012.

EXHIBIT.P7 : TRUE COPY OF THE ORDER IN IA NO.2478(1)/2012 DTD.19.11.2012.

RESPONDENT'S EXHIBITS: NIL

R.AV

//TRUE COPY//

PATO JUDGE

K.ABRAHAM MATHEW, J

O.P.(C)NO.4193 OF 2012

Dated this the 28th day of October, 2015

J U D G M E N T

Petitioners are the defendants in OS.200 of 2012 of Principal Munsiff Court, Kochi. The respondents filed the suit for declaration of easement over the plaint B schedule pathway, which forms part of the petitioners' property. The petitioners have made a counter claim. The relief prayed for is a perpetual injunction. They also filed Ext.P6 application to appoint a commissioner to measure the property on the basis of title deed and survey plan. By Ext.P7 order the learned Munsiff has dismissed it.

2. Heard.

3. The learned Musniff dismissed the application on the ground that title of the property is not in question. The ground on which the counter claim is made is that the respondents objected to the measurement of the properties by the petitioners. I have no doubt that the prayer to measure the property of the petitioners on the basis of title deed and survey plan is unnecessary. Issues have so far not been framed. If to decide the issues

arising on the pleadings measurement of the properties on the basis of title deed and survey plan is necessary the learned Munsiff may appoint a commissioner on the application of either of the parties or suo motu.

In the result, this O.P is dismissed with the above observation.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge