

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

OP(C).No. 399 of 2015 (O)

**AGAINST THE ORDER/JUDGMENT IN OS 284/2013 of MUNSIFF COURT,
HOSDRUG**

PETITIONER(S):

**BABU.C AGED 53 YEARS
S/O.LATE V.KUNHAMBU MADAYAN
RESIDING AT AJANUR THERU, AJANUR VILLAGE
HOSDURG TALUK, P.O.AJANUR, KASARAGOD DISTRICT.**

**BY ADVS.SRI.SURESH KUMAR KODOTH
SRI.K.PANTONY BINU**

RESPONDENT(S):

**AMMALU, AGED 55 YEARS
W/O.V.KANNAN, RAMAN, RESIDING AT AJANUR THERU
AJANUR VILLAGE, HOSDURG TALUK, P.O.AJANUR
KASARAGOD DISTRICT-671531.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1: TRUE COPY OF THE PLAINT IN OS NO.284/2013 IN THE COURT OF
MUNSIFF OF HOSDURG.**

EXT.P2-TRUE COPY OF WRITTEN STATEMENT IN OS.NO.284/2013.

EXT.P3-TRUE COPY OF THE COMMISSIONER REPORT DATED 3.9.2013.

EXT.P4-TRUE COPY IA.NO.487/2015

EXT.P5-TRUE COPY ORDER DATED 4.2.2015 IN IA.NO.487/15.

RESPONDENT'S EXHIBITS: **NIL**

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C) No.399 of 2015

Dated this the 16th day of October, 2015

J U D G M E N T

Petitioner is the plaintiff in O.S.No.284 of 2013. He filed an application for appointment of a commissioner to measure the property and to ascertain certain other facts. The commissioner filed Ext.P3 report. Thereafter, the learned Munsiff posted the case for trial. The petitioner filed IA.487 of 2015 to remove the case from the list on the allegation that the report filed by the commissioner is only an interim report.

2. Heard.

3. I have no doubt that Ext.P5 order of the learned Munsiff is not correct. A perusal of Exct.P3 commission report shows that it is only an interim report. The learned Munsiff should have waited for the filing of the final report by the commissioner before the suit was posted for trial. But the learned Munsiff may consider whether the measurement of the property on the basis of survey plan and title deed is necessary in the nature of the case.

In the result, this O.P is allowed. Ext.P5 order is set aside. The learned Munsiff is directed to re-consider the order to measure the property on the basis of title deed and survey plan in the nature of the case and if the learned Munsiff comes to the conclusion that the measurement is necessary he shall wait for the commissioner to file the final report.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge
