

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP(C).No. 464 of 2015 (O)

OS.NO.606/2008 OF PRINCIPAL MUNSIF'S COURT, PALAKKAD

PETITIONER:

**SIVADASAN, AGED 48 YEARS,
S/O.RAMANKUTTY, KARUKAMANI, PALATHULLY AMSOM DESOM,
CHITTOOR COLLEGE P O, PALAKKAD TALUK.**

**BY ADVS.SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN**

RESPONDENTS:

**VINEESHKUMAR, AGED 61 YEARS,
S/O.KOCHU, RESIDING AT KOVILAKAM KALAM, KARUKAMANI,
PERUVEMBU AMSOM, PALAKKAD TALUK-678531.**

**BY ADVS. SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF
SRI.T.U.SUJITH KUMAR
SMT.ANU JACOB**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1:- TRUE COPY OF THE PLAINT DTD 13/10/2008 IN OS NO 606/2008 ON THE FILES OF THE PRINCIPAL MUNSIFFS COURT, PALAKKAD
- EXT P2:- TRUE COPY OF WRITTEN STATEMENT DTD 9/12/2008 FILED BY THE PETITIONER HEREIN IN OS 606/2008 ON THE FILES OF PRINCIPAL MUNSIFFS COURT, PALAKKAD
- EXT P3:- TRUE COPY OF THE REPORT AND SKETCH OF THE COMMISSIONER AND DTD 22/10/2008 IN IA NO 3688/2008 IN OS NO 606/2008 ON THE FILES OF PRINCIPAL MUNSIFFS COURT, PALAKKAD
- EXT P4:- TRUE COPY OF WORK MEMO DTD 24/6/2009 SUBMITTED BY THE PETITIONER TO THE COMMISSIONER IN IA NO 1670/2009 IN OS NO 606/2008 ON THE FILES OF PRINCIPAL MUNSIFFS COURT PALAKKAD
- EXT P5:- TRUE COPY OF THE COMMISSIONER'S REPORT ALONG WITH A SKETCH SUPPLIED BY THE TALUK SURVEYOR AND DTD 29/9/2014 IN OS NO 606/2008 ON THE FILES OF PRINCIPAL MUNSIFF'S COURT, PALAKKAD
- EXT P6:- TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO THE COMMISSIONER'S REPORT AND DTD 28/10/2014
- EXT P7:- TRUE COPY OF IA NO 3061/2014 AND DTD 20/10/2014 SUBMITTED BY THE PETITIONER IN OS NO 606/2008 BEFORE THE PRINCIPAL MUNSIFFS COURT, PALAKKAD
- EXT P8:- TRUE COPY OF THE ORDER DTD 12/12/2014 IN IA NO 3061/2014 IN OS NO 606/2008 PASSED BY PRINCIPAL MUNSIFF'S COURT, PALAKKAD
- EXT P9:- TRUE COPY OF IA NO 610/2015 DTD 9/2/2015 FILED BY THE PETITIONER IN OS NO 606/2008 BEFORE THE PRINCIPAL MUNSIFFS COURT, PALAKKAD
- EXT P10:- TRUE COPY OF OBJECTION DTD 10/2/2015 TO EXT P9
- EXT P11:- TRUE COPY OF THE ORDER DTD 12/2/2015 IN IA NO 610/2015 IN OS NO 606/2008 PASSED BY THE PRINCIPAL MUNSIFFS COURT , PALAKKAD

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

PJ

P.S. TO JUDGE

B. KEMAL PASHA, J.

.....
O.P.(C) No.464 of 2015
.....

Dated this the 29th day of June, 2015

J U D G M E N T

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Petitioner, who is the defendant in the suit before the court below, has challenged the Commissioner's report and plan prepared by the Surveyor. According to the petitioner, a work memo was issued to the Commissioner; but the Commissioner has not cared to note down the matters requested for in the work memo. The dispute is with regard to a bund situated at the northern side as well as the eastern side of the scheduled property. According to the petitioner, there are certain trees on the said eastern and northern sides. In the suit, the plaintiff wanted to cut and remove those trees by stating that, on account of the shade from the trees, cultivation is not possible in the paddy

field. The petitioner resisted the said act and consequently, the suit was filed.

2. It is the case of the petitioner that the petitioner has applied for getting the Commissioner's report and plan set aside, for which an IA was filed. The IA was heard by the court below. According to the petitioner, no order was passed on the IA. In the B diary, it was noted that the said IA was dismissed. The petitioner applied for a certified copy of the said order. In the meantime, the evidence in the suit commenced. During the course of the evidence only, the petitioner could obtain the certified copy of the order. Then, the petitioner could come to know that the court below had not dismissed the IA, whereas it was deferred. Therefore, the petitioner wanted to examine the Surveyor also in order to bring out the fact that a proper measurement was not carried out by the Surveyor. An application for the same was filed before the court below. The court below has dismissed the said IA through Ext.P11 order.

3. Heard learned counsel for the petitioner and learned counsel for the respondent.

4. The court below has stated in Ext.P11 order that the petitioner has got ample opportunity to cross-examine PW1 with regard to the Commissioner's report. Further, he has availed of an opportunity to examine the Commissioner also and in such case, the examination of the Taluk Surveyor is not at all required.

5. When the petitioner has got serious contentions as against the Commissioner's report and the plan appended with the report, and an IA for getting the Commissioner's report and plan set aside is also pending consideration as the same has only been deferred by the court below, there is nothing wrong in permitting the petitioner to examine the Surveyor also in the matter. The court below ought not to have turned down the request of the petitioner for the examination of the Surveyor. Matters being so, Ext.P11 order is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Ext.P11 stands set aside. The court below is directed to give an opportunity to the petitioner to examine the Surveyor, after re-opening the evidence.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/29/06

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PA to Judge