

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

OP(C).No. 473 of 2015 (O)

(O.S.205/2012 OF ADDITIONAL MUNSIFF COURT, KASARAGOD)

PETITIONER:

PUSHPA AGED 57 YEARS
W/O NARAYANA SHETTY, KELANGINAMANE, NEAR GUDDE TEMPLE
KUDLU VILLAGE AND POST, KASARAGOD TALUK.

BY ADV. SRI.R.SREEHARI

RESPONDENTS:

1. K. JAYASHEELA, AGED 42 YEARS,
S/O K.RAGHAVAN, H.NO.9/181.
2. KORAGA NAIK, 67 YEARS,
(FATHER'S NAME NOT KNOWN TO THE PETITIONER)
H.NO.9/174
BOTH RESIDING NEAR GUDDE TEMPLE
KUDLU VILLAGE AND POST, KASARAGOD TALUK, PIN:671 124.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 473 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: PHOTOCOPY OF THE PLAINT IN OS NO.205/2012 OF ADDL.
MUNSIFFS COURT, KASARAGOD.

EXHIBIT P2: PHOTO COPY OF THE WRITTEN STATEMENT OF THE
DEFENDANTS IN O.S.NO.205/2012 OF ADDL. MUNSIFF COURT,
KASARAGOD.

EXHIBIT P3: PHOTO COPY OF INTERIM REPORT FILED BY THE ADVOCATE
COMMISSIONER IN IA 1454/2012 IN OS NO.205/2012 OF ADDL
MUNSIFF'S COURT, KASARAGOD.

EXHIBIT P4: PHOTO COPY OF THE DETAILED REPORT FILED BY THE
ADVOCATE COMMISSIONER IN IA 1454/2012 IN
OS NO.205/2012 OF ADDL MUNSIFFS COURT, KASARAGOD.

EXHIBIT P4(a): PHOTO COPY OF PLAN FILED ALONG WITH EXT.P4 REPORT.

EXHIBIT P5: PHOTO COPY OF AFFIDAVIT AND APPLICATION IA 582/2014 IN
OS NO.205/2012 OF ADDL. MUNSIFFS COURT, KASARAGOD.

EXHIBIT P6: PHOTO COPY OF COUNTER FILED IN IA 582/2014 IN
OS NO.205/2012 OF ADDL MUNSIFFS COURT, KASARAGOD.

EXHIBIT P7: PHOTO COPY OF THE ORDER IN IA 582/2014 IN
OS NO.205/2012 OF ADDL MUNSIFF'S COURT, KASARAGOD
DATED 21.6.2014.

RESPONDENT'S EXHIBITS: NIL

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.473 OF 2015

Dated this the 24th day of February, 2015.

J U D G M E N T

The petitioner sought remission of Commissioner's report on certain ground which the court below found not acceptable. It was contended before the court below that the Commissioner has wrongly noted the width of eastern side of the channel as 1 metre instead of 1 feet. Though in the report it is stated that on the western side the width is 15 to 20 cm, the court below noticed that in the plaint, the width is less than 2 feet which is not denied in the written statement. The court below was also of the view that regarding other matters, the Commissioner has reported his finding correctly and there is no infirmity in that regard. As regards the width of channel, there is some ambiguity and the court below found that that is a matter which can be clarified by examining the Commissioner during trial and for that purpose, Commissioner's report need not be remitted back.

2. The court below felt that even assuming that clarification is required in the Commissioner's report, it is not necessary to remit the same back. The court below granted liberty to both parties to agitate this issue at the time of trial. It can thus be seen that the interest of both parties are safeguarded by the order of the court below.

The court below itself has noticed anomaly in the Commissioner's report. But the view taken by the court below that there is no need to remit the Commissioner's report now cannot be said to be incorrect since rights of both parties are reserved at the time of trial.

The original petition is without merits and it is accordingly dismissed.

Sd/-

P.BHAVADASAN
JUDGE

smp