

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

OP(C).No. 571 of 2015 (O)

IA NO. 2140/14 IN OS NO. 47/12 OF PRINCIPAL SUB COURT, KOTTAYAM

PETITIONER(S) :

1. TESSYAMMA ABRAHAM
W/O.ABRAHAM, PUTHENPURACKAL HOUSE, ERAVUCHIRA KARA
ERAVUCHIRA P.O., CHANGANACHERY TALUK.
2. ELIZABETH ABRAHAMN,
D/O.ABRAHAM, PUTHENPURACKAL HOUSE, ERAVUCHIRA KARA
ERAVUCHIRA P.O, CHANGANACHERY TALUK.
3. ELVIN ABRAHIM,
S/O.ABRAHAM, PUTHENPURACKAL HOUSE, ERAVUCHIRA KARA
ERAVUCHIRA P.O, CHANGANACHERY TALUK.

BY ADV. SRI.P.I.GEORGEKUTTY

RESPONDENT(S) :

1. LOVELY GEORGE
W/O.GEORGEKUTTY, PUTHENPURACKAL, ERAVUCHIRA KARA
ERAVUCHIRA P.O., THOTTAKKAD VILLAGE
NOW RESIDING AT NO.6, 2ND MAIN ROAD,
ELANGO NAGAR, PONDICHERY - 11.
2. GEORGEKUTTY,
S//O.ABRAHAM, PUTHENPURACKAL HOUSE, ERAVUCHIRA KARA
ERAVUCHIRA P.O., THOTTAKAD VILLAGE
NOW RESIDING AT NO.6, 2ND MAIN ROAD,
ELANGO NAGAR, PONDICHERY - 11.
3. CHACKO MATHEW,
S/O.MATHEW, CHAKKITTATHARAYIL HOUSE, PULLAD KARA
PULLAD P.O., THIRUVALLA.

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

OP(C).No. 571 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1: THE TRUE COPY OF THE PLAINT IN OS NO.47/2012 OF THE SUB COURT, KOTTAYAM DATED 28/1/2012.
- EXT. P2: THE TRUE COPY OF THE WRITTEN STATEMENT IN THE SUIT FILED BY THE DEFENDANTS 1 AND 2 DATED 18/5/2012.
- EXT. P3: THE TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDANTS 1 AND 2 DATED 15/6/2012.
- EXT. P4: THE TRUE COPY OF THE COMMISSION REPORT SUBMITTED BY ADV. KIRAN BABU IN OS NO.47/2012.
- EXT. P5: THE TRUE COPY OF THE COMMISSION REPORT SO FILED BY ADV. JISSAMOL DATED 7/6/2013.
- EXT. P6: THE TRUE COPY OF THE COMMISSION APPLICATION IA NO.2140/2014 DATED 10/11/2014.
- EXT. P7: THE TRUE COPY OF THE ORDER IN I.A 2140/14 DT. 1/11/2014.
- EXT. P8: THE TRUE COPY OF THE PHOTOGRAPH OF THE PIT

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

P. BHAVADASAN, J.

O.P.(C). No. 571 of 2015

Dated this the 3rd day of March, 2015.

JUDGMENT

The suit was laid by the petitioners, who are the plaintiffs, in respect of plaint item No. 4 way seeking to restrain defendants 1 and 2 from closing the same. Even though an interlocutory application for interim order was filed, no order was passed and it is still pending. The suit was resisted by the defendants. It is pointed out that an ex-parte commissioner visited the property and prepared Ext.P4 report. Subsequently another survey commission was taken out and that Commissioner has filed Ext.P5 report. Pointing out certain subsequent developments, the petitioners moved the court below for appointment of a fresh commission without seeking to set aside the earlier report. The court below rightly held that in the light of the fact that there are already two commission reports, and

without setting aside those reports, a fresh commission cannot be issued and dismissed the petition.

2. Learned counsel for the petitioners points out that the cause of action is different and the case being that the survey commission report is not acceptable, a fresh commission has to be issued.

3. The plea cannot be entertained for more than one reason. There are already two commission reports. Even assuming that an ex-parte commission report cannot be accepted, there is another report in respect of the property.

4. If the petitioners had any objection to that report, it is for them to file objection and get the report set aside. If it is his case that additional features had to be noticed, he had to seek remission of the commission report and the prayer for issuance of a fresh commission is misconceived. Therefore, the court below was perfectly justified in dismissing the application.

This Original Petition is dismissed. However, this judgment shall not stand in the way of the petitioners moving the court below seeking for remission of the commission report to indicate certain additional factors as they feel necessary for a proper disposal of the case.

sb.

P. BHAVADASAN,
JUDGE