

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP(C).No. 586 of 2015 (O)

IA.1749/2014 IN IA.NO.1343/2013 IN OS.NO.43/2012 OF MUNSIF COURT,
PERUMBAVOOR
.....

PETITIONER(S)/PLAINTIFF:

PHILIPOSE, AGED 55 YEARS,
AGRICULTURIST, S/O.KURIAKO, NARIKUZHI VEETIL,
NJARALLOORE KARA, KIZHAKAMBALAM VILLAGE,
KUNNATHUNADU TALUK.

BY ADVS.SRI.V.K.ISSAC
SRI.K.K.APPU
SRI.ISAC SANJAY

RESPONDENT(S)/DEFENDANTS:

1. MATHAI, S/O.IYPE,
VIRUTHANATTU VEETIL NJARLLOORE KARA,
KIZHAKAMBALAM VILLAGE,
KUNNATHUNADU TALUK - 683 562.
2. MARY, WIFE OF VARGHESE,
VIRUTHANATTU VEETIL NJARLLOORE KARA,
KIZHAKAMBALAM VILLAGE,
KUNNATHUNADU TALUK - 683 562.
3. YACOB, S/O.IPE,
VIRUTHANATTU VEETIL NJARLLOORE KARA,
KIZHAKAMBALAM VILLAGE,
KUNNATHUNADU TALUK - 683 562.

BY ADV. SRI.P.THOMAS GEEVERGHESE
BY ADV. SRI.TONY THOMAS (INCHIPARAMBIL)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

OP(C).No. 586 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF PLAINT DATED 4.2.2012 IN OS.NO.43/2012.

P2- TRUE COPY OF WRITTEN STATEMENT DATED 3.2012.

**P3- TRUE COPY OF INTERIM COMMISSION REPORT ALONG WITH SURVEYOR'S
REPORT DATED 16.6.14.**

**P4- TRUE COPY OF COMMISSION REPORT DATED 11.7.14 ALONG WITH PLANS
1,2, & 3.**

**P5- TRUE COPY OF THE OBJECTION DATED 5.8.14 TO THE COMMISSION REPORT
IN IA 1343/13.**

P6- TRUE COPY OF IA NO. 1749/14 DATED 5.8.14 ALONG WITH AFFIDAVIT.

P7- TRUE COPY OF OBJECTION DATED 4.8.14 TO IA NO. 1749/14.

**P8- TRUE COPY OF ORDER DATED 3.2.2015 IN IA.NO.1749/14 IN IA 1343/13 IN
OS NO. 43/12**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
O.P.(C) No.586 of 2015
.....

Dated this the 9th day of July, 2015

J U D G M E N T

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Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner had applied for getting the Commissioner's report and plan set aside. The Commissioner has executed the Commission order and he has filed Ext.P4 report, which contains the plans prepared by the Surveyor. The request of the petitioner is to conduct the survey and measurements in accordance with the old survey plan. It seems that even though many opportunities were given to the petitioner to produce the old survey plan, no such documents were produced and, therefore, the Commissioner was constrained to rely on the re-survey plan to carry out the measurements.

3. The present challenge is with regard to Ext.P8. Through Ext.P8 order, the court below has found that the petitioner had failed to produce documents even though he was directed to produce those documents for carrying out the measurements. Through Ext.P8, the court below has left the matter open by stating that the petitioner can maintain the challenge against the Commissioner's report during evidence. The present request of the learned counsel for the petitioner is to survey the property of the defendant in accordance with his title deed. It seems that the Surveyor has surveyed and prepared the plan of the defendant's property. As the old survey plan was not made available, the measurements were carried out on the basis of the re-survey plan. Still, the learned counsel for the petitioner has conceded that the old survey plan is not available with the petitioner. In such case, the only course open at present is to go by Ext.P8 order passed by the court below. When the court below has given an opportunity to the petitioner to

challenge the validity of the Commissioner's report and plans during evidence, it seems that no interference with Ext.P8 order is required at present.

In the result, this O.P.(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/09/07

// True Copy //

PA to Judge