

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.BHAVADASAN**

**FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936**

**OP(C).No. 607 of 2015 (O)**

**(I.A.NO.1463/2015 IN OS.NO. 1079/2013 OF II ADDL.MUNSIFF COURT, ERNAKULAM)**

**PETITIONER(S)/PLAINTIFFS:**

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1. KAKKANAD MEDICAL CENTRE PRIVATE LIMITED,  
ASWATHY, SANTHI NIKETHAN GARDENS, KAVUMPADY ROAD,  
MUVATTUPUZHA P.O., PIN-686 661,  
REPRESENTED BY ITS DIRECTOR DR.SAJESH ASHOKAN.
  2. DR.SAJESH ASHOKAN,S/O.N.N.ASHOKAN,AGED 44 YEARS,  
NEDUNGAYIL HOUSE, KAVUMPADY ROAD,  
MUVATTUPUZHA P.O.-686 661.

BY ADVS.SRI.PHILIP T.VARGHESE  
SRI.THOMAS T.VARGHESE  
SMT.ACHU SUBHA ABRAHAM

**RESPONDENT(S)/DEFENDANTS:**

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1. BABU,FATHERS NAME NOT KNOWN TO THE PLAINTIFF,  
AGED ABOUT 55 YEARS, PAINATTIL HOUSE,  
KOPPARAMBIL LANE, KAKKANAD.P.O.,  
ERNAKULAM DISTRICT, PIN-682 030.
  2. SHYAM KUMAR.K.P.,  
S/O.PADMANABHAPILLAI,AGED ABOUT 30 YEARS,  
KOPPARAMBIL HOUSE,KOPPARAMBIL LANE,  
KAKKANAD.P.O., ERNAKULAM DISTRICT, PIN-682 030.
  3. NALINIKUTTY, W/O.THANKAPPAN, AGED 65 YEARS,  
KARIKALIPARA HOUSE, THAMBOORATTY,  
PARAMBU ROAD, EDAPALLY-682 024.
  4. RENUKA NARAYANKUTTY, W/O.NARAYANAN,AGED 55 YEARS,  
PARATHAYIL HOUSE, KAKKANAD.P.O.,  
ERNAKULAM DISTRICT, PIN-682 030.
  5. THRIKKAKARA MUNICIPALITY,  
REPRESENTED BY ITS SECRETARY, KAKKANAD.P.O.,  
ERNAKULAM DISTRICT, PIN-682 030.

R5 BY ADV. SRI.S.SHANAVAS KHAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION  
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

OP(C).No. 607 of 2015 (O)

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**APPENDIX**

**PETITIONER(S)' EXHIBITS**

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- P1: COPY OF THE PLAINT IN O.S.NO.1079/2013 DATED 11.10.2013 FILED BEFORE THE MUNSIFF'S COURT, ERNAKULAM.
- P2: COPY OF THE WRITTEN STATEMENT FILED BY 2ND DEFENDANT IN O.S.NO.1079/2009 BEFORE THE MUNSIFF'S COURT, ERNAKULAM DATED 10.7.2009.
- P3: COPY OF THE WRITTEN STATEMENT FILED BY 3RD DEFENDANT IN O.S.NO.1079/2009 BEFORE THE MUNSIFF'S COURT, ERNAKULAM DATED 20.11.2013.
- P4: COPY OF THE WRITTEN STATEMENT FILED BY 4TH DEFENDANT IN O.S.NO.1079/2009 BEFORE THE MUNSIFF'S COURT, ERNAKULAM DATED 24.2.2014.
- P5: COPY OF THE WRITTEN STATEMENT FILED BY 5TH DEFENDANT IN O.S.NO.1079/2009 BEFORE THE MUNSIFF'S COURT, ERNAKULAM DATED 7.2.2014.
- P6: COPY OF I.A.NO.1463/2015 IN O.S.NO.1079/2013 BEFORE THE MUNSIFF'S COURT, ERNAKULAM DATED 12.2.2015.
- P7: COPY OF WORK MEMO FILED IN I.A.NO.1463/2015 IN O.S.NO.1079/2013 OF MUNSIFF'S COURT, ERNAKULAM DATED 16.2.2015.
- P8: COPY OF ORDER IN I.A.NO.1463/2015 IN O.S.NO.1079/2013 OF THE MUNSIFF'S COURT, ERNAKULAM DATED 18.2.2015.
- P9: COPY OF AFFIDAVIT FILED BY 5TH RESPONDENT IN O.S.NO.1079/2013 OF THE MUNSIFF'S COURT, ERNAKULAM DATED 3.3.2015.
- P10: COPY OF I.A.NO.1463/2015 IN O.S.NO.1079/2013 DATED 13.2.2015.

**RESPONDENT(S)' EXHIBITS:**

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NIL

/TRUE COPY/

P.A.TO.JUDGE

**P.BHAVADASAN, J.**

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O.P.(C) No. 607 of 2015  
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Dated this the 06<sup>th</sup> day of March, 2015

**J U D G M E N T**

Sri. Shanavas Khan appears for the respondents.

2. Under challenge is Ext.P8 order whereby the court below refused the prayer made by the petitioners for ascertainment of certain facts by examining the registers kept by the local authority.

3. The facts absolutely necessary for the disposal of this petition are as follows:

The matter relates to a drain which is running around the property of the petitioner. The respondents say that that is a portion of the larger drainage and they are entitled to maintain the same. The dispute centered around on this aspect of the case.

4. The defendants in the suit sought for issuance of a Commission and that petition was allowed. The plaintiffs in the suit who are petitioners before this Court also filed a

work memo to note certain facts. When the plaintiffs filed their work memo, the court below was of the opinion that some of matters therein are matters of evidence and not for the Commissioner to verify by inspection and therefore, declined certain reliefs in the work memo filed by the plaintiffs by Ext.P8 order in respect of those matters.

5. The grievance of the petitioners is that merely because interrogatories have been served, it is not a ground not to allow the matters mentioned in the work memo by petitioners and the court below ought not have shut out the evidence in this case.

6. One fails to understand the procedure sought for by the plaintiffs. If they keen about having the particulars of the drainage determined as per the registers kept by the local authority, all that they had to do is to seek a direction from the court below for production of the documents instead of seeking Commission to note those facts. That would have been the proper procedure to be followed.

7. The court below was justified in its approach that the inspection of the records by the Commissioner may not be justifiable. Whatever that be, the petitioner is given liberty to seek production of those documents before court from the local authority and thereafter, the Commissioner may visit the property and the court below may then re-consider the work memo filed by the petitioner.

With these observations, this petition is disposed of.

Sd/-  
**P.BHAVADASAN**  
**JUDGE**

ds

//True copy//

P.A. to Judge