

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

OP(C).No. 666 of 2015 (O)

IN I.A.253/2015 IN O.S. NO. 41/2013 OF SUB COUYRT, KOTTARAKKARA

PETITIONER(S)/PLAINTIFF:

**RAJAGOPALA RAO, AGED 65 YEARS
GOPALA VILASOM, PIDAVOOR, PATHANAPURAM TALUK
KOLLAM DISTRICT.**

**BY ADVS.SRI.V.PREMCHAND
SRI.V.TEKCHAND**

RESPONDENT(S):

- 1. KRISHNAMOORTHY RAO SREENIVASA RAO
LEKSHMI NIVAS, PANAMPATTA, AVANEESWARAM PIDAVOOR
PATHANAPURAM TALUK, KOLLAM DISTRICT-691 625.**
- 2. THE VILLAGE OFFICER
PIDAVOOR VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT-691 625.**
- 3. THE TAHSILDAR
PATHANAPURAM TALUK, KOLLAM DISTRICT-691 625.**
- 4. THE STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR
KOLLAM-691 013.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

OP(C).No. 666 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1. TRUE COPY OF THE APPLICATION DATED 6/2/2015 FILED BY THE
 PETITIONER**

**EXT.P2. TRUE COPY OF THE ORDER DATED 23/2/2015 IN OS NO.41/2013 OF
 THE SUB COURT, KOTTARAKKARA.**

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

ds

P.BHAVADASAN, J.

O.P.(C) No. 666 of 2015

Dated this the 11th day of March, 2015

J U D G M E N T

An unimaginative order gave rise to this petition.

2. The suit filed by the respondent was one for fixation of northern boundary and southern boundary of the property. On the northern side, admittedly is the property belonging to the first defendant who is the petitioner herein. When I.A.No.11/2015 was moved by the plaintiff for appointment of a Commission to measure his property with the help of a Taluk Surveyor, the defendant also moved an application as I.A.No.253/2015 to have his southern property measured and located which is the northern boundary of the plaintiff. Strangely enough, the court below dismissed I.A.No. 253/2015 i.e. the application filed by the defendant to have his property measured.

3. The court below readily accepted the case of the plaintiff that since the title deed of the defendants is not

produced and since there is no contention from the defendants that any portion of their property was encroached by the plaintiff, there is no need to measure the property of the defendants.

4. Assailing the said order, the learned counsel for the petitioner pointed out that being a suit for fixation of boundary, it is necessary that both the properties are measured so as to ascertain the exact dividing line between the properties. Therefore the order is unsustainable.

5. The learned counsel appearing for the respondent on the other hand pointed out that there was an earlier suit between the defendant and others in which his property has been measured and boundaries of his property have been located. The attempt now is to get a Commissioner's report so as to vary the earlier boundary fixed by the Commissioner in other suit.

6. In the other suit made mention of by the learned counsel for the respondent, admittedly, the plaintiff is not a

party. It is pointed out by the learned counsel appearing for the petitioner before this Court that, that was a suit between the brothers. The defendant has a case that on the southern portion of the property claimed by the plaintiff is 'puramboke land' and the State is also a party to the present suit. They have filed a counter stating so. It is under these circumstances, the petitioner herein was constrained to move a petition to have his property measured to fix the southern boundary of his property which is the northern boundary of the plaintiff.

7. There is nothing which prevents the petitioner from handing over the title deed to the Commission at the time of work measurement. Merely because the title deed is not produced along with the written statement, is not a ground to reject his prayer.

8. After having heard the learned counsel on both sides, there seems to be considerable force in the submission made by the learned counsel for the petitioner

who is the first defendant in the suit.

9. The suit is admittedly one for fixation of boundary namely the southern and northern boundary of the plaint schedule property. Admittedly, the northern side of the plaint schedule property is the first defendant's property. The fact that it might have been measured in some other suit is not a ground to reject the prayer for measurement in the present suit nor is the non production of title deed a ground to reject the same. Title deeds could be produced later or even produced at the time when the Commissioner visits the property. At any rate, being a suit for fixation of the boundaries, it is only proper that both the properties are measured so as to fix a common boundary.

10. Taking note of the above facts, it is felt that the impugned order is unsustainable in law and the same is set aside and I.A.No. 253/2015 filed by the first defendant is also allowed along with I.A.No. 11/2015 which is already allowed by the court below and the Commissioner shall measure the

property of the first defendant also and file a plan and report accordingly.

The expenses for the Commissioner and Surveyor will be borne by the first defendant.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge