

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

OP(C).No. 800 of 2015 (O)

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AGAINST THE ORDER/JUDGMENT IN O.S.NO.28/2013 OF THE COURT OF THE
MUNSIFF(ADDITIONAL) PALAKKAD
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PETITIONER(S):

- 1. KITTAPPAN AGED 69 YEARS
S/O. LATE PAZHANIYANDI CHEDTTIAR**
- 2. K.BABU, AGED 36 YEARS
S/O. P. KITTAPPAN**
- 3. K. MUKESH, AGED 31 YEARS
S/O. P. KITTAPPAN, ALL ARE RESIDING AT 24/574
MERCY COLLEGE ROAD, CHAKKANTHARA, PALAKKAD TALUK
PALAKKAD DISTRICT.**

**BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF
SRI.T.U.SUJITH KUMAR
SMT.ANU JACOB**

RESPONDENT(S):

- 1. RAJAN, AGED 66 YEARS
S/O. PERIYASWAMY CHETTIAR**
- 2. RAJALAKSHMI,, AGED 58 YEARS
W/O. RAJAN, ALL ARE RESIDING AT SOORAJ BHAVAN
PIRAYIRI AMSOM DESOM, PALAKKAD TALUK
PALAKKAD DISTRICT PIN-678019.**

**R1-R2 BY ADV. SRI.SAJAN VARGHEESE K.
R1-R2 BY ADV. SRI.LIJU. M.P**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 11-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 800 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1. A TRUE COPY OF THE PLAINT IN ORIGINAL SUIT NUMBER 28/2013 OF THE COURT OF THE MUNSIF OF PALAKKAD.

EXHIBIT.P2. A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN ORIGINAL SUIT NUMBER 28/2013 OF THE COURT OF THE MUNSIF OF PALAKKAD.

EXHIBIT.P3. A TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER DATED JANUARY 21, 2013.

EXHIBIT.P4. A TRUE COPY OF THE INTERLOCUTORY APPLICATION NUMBER 475/2015 IN ORIGINAL SUIT NUMBER 28/2013 OF THE COURT OF THE MUNSIF OF PALAKKAD.

EXHIBIT.P5. A TRUE COPY OF THE ORDER DATED FEBRUARY 18, 2015 IN INTERLOCUTORY APPLICATION NUMBER 475/2015 IN ORIGINAL SUIT NUMBER 28/2013 OF THE COURT OF THE MUNSIF (ADDITIONAL) PALAKKAD.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)No.800 of 2015

Dated this the 11th day of September, 2015

J U D G M E N T

Petitioners are defendants in O.S.No.28 of 2013 on the file of Munsiff (Additional) Palakkad. His application for issuance of a commission for local inspection was dismissed by Ext.P5 order. The prayer is to set aside the order and to direct issuance of a commission.

2. Heard the learned counsel for both sides.

3. I have perused the points sought to be ascertained in Ext.P4 commission application filed by the petitioners. Points 1, 2, 3, 4, 6 and 7 are either beyond the scope of the suit or facts which cannot be ascertained in a local inspection. Point No.5 relies to a 'chal' allegedly existing between the properties of the parties. The earlier commissioner has already reported that there is a 'chal'. Another request is to ascertain whether it slopes to the west and whether it reaches another 'chal' on the west. It is true that the commissioner has not reported whether it slopes towards the west. For this purpose alone this

commission application can be allowed though it is too late.

In the result, this O.P is allowed in part. The learned Munsiff is directed to depute the commissioner at the expense of the petitioners to ascertain point No.5 in Ext.P4 commission application.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge