

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

OP(C).No. 819 of 2015 (O)

**I.A.NO.807/2015 & I.A.NO.255/2015 IN O.S.NO.138/1991 OF ADDITIONAL MUNSIF'S
COURT, CHERTHALA**

PETITIONER(S)/PLAINTIFF :

**UNNIKRISHNAN, AGED 53 YEARS,
S/O.THANKAPPAN, GOVERNMENT EMPLOYEE,
KOTTARATHIL, THURAVOOR THEKKU MURI,
THURAVOOR THEKKU VILLAGE, CHERTHALA.**

**BY ADVS.SRI.T.JAYAKRISHNAN
SRI.R.KRISHNAKUMAR (CHERTHALA)**

RESPONDENT(S)/DEFENDANTS :

- 1. SANTHAMMA,
W/O.VISHVAMBHARAN NAIR, PULIYANAMOOTHEATH,
ANGAMALI VILLAGE, ERNAKULAM DISTRICT- 682 047.**
- 2. PRABHAVATHI AMMA,
W/O.MADHUSOODANA PANICKER, KOTTARATHIL,
PADINJATTINKARA THEKKUM MURI,
THURAVOOR THEKKU VILLAGE- 688 525.**
- 3. MUKUNDAN,
S/O.SARALAMMA, CHERUVALLIL,
VAYALAR KIZHAKKU VILLAGE- 688 541.**
- 4. MANOJ,
S/O.SARALAMMA, OF DO- -DO- -DO-.**
- 5. JAYA,
D/O.SARALAMMA, OF -DO- -DO- -DO-.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: A TRUE COPY OF PLAINT (AS AMENDED) IN O.S. NO.138/1991 DATED 08/02/1991.**
- EXHIBIT P2: A TRUE COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS IN O.S. NO.138/1991 OF MUSIFFS COURT CHERTHALA.**
- EXHIBIT P3: A TRUE COPY OF ADDITIONAL WRITTEN STATEMENT TO THE AMENDED PLAINT.**
- EXHIBIT P4: A TRUE COPY OF JUDGMENT PASSED BY THE MUNSIFF'S COURT CHERTHALA IN O.S. NO.138/1991 DATED 28/01/2002.**
- EXHIBIT P5: A TRUE COPY OF JUDGMENT PASSED BY THE SUB COURT CHERTHALA IN A.S. NO.69/2002 DATED 21/12/2009.**
- EXHIBIT P6: A TRUE COPY OF COMMISSION REPORT AND PLAN DATED 11/08/2014 IN O.S.NO.138/1991.**
- EXHIBIT P7: A TRUE COPY OF I.A. NO.255/2015 DATED 16/01/2015.**
- EXHIBIT P8: A TRUE COPY OF OBJECTION FILED BY DEFENDANTS TO I.A. NO.255/2015.**
- EXHIBIT P9: A TRUE COPY OF ORDER PASSED BY MUNSIFFS COURT CHERTHALA IN I.A. NO.255/2015 DATED 16/01/2015.**
- EXHIBIT P10: A TRUE COPY OF I.A. NO.807/2015 IN O.S.NO.138/1991 FILED BY PLAINTIFFS ON 20/02/2015.**
- EXHIBIT P11: A TRUE COPY OF OBJECTION FILED TO I.A.NO.807/2015 BY THE DEFENDANTS.**
- EXHIBIT P12: A TRUE COPY OF ORDER PASSED BY MUNSIFFS COURT CHERTHALA IN I.A.NO.807/2015 DATED 09/03/2015.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

P. BHAVADASAN, J.

O.P.(C). No. 819 of 2015

Dated this the 24th day of March, 2015.

JUDGMENT

Under challenge is Ext.P2 order whereby the court below refused to accede to the request made by the petitioner to summon the defendants under Order 10 Rule 2 sub rule (2) of the Code of Civil Procedure.

2. The suit had a checkered career. The suit which is of the year 1991 is yet to reach its culmination. The plaintiff was successful in establishing his title, but he was non-suited for want of identification of the property. The appellate court remanded the matter to the trial court and after the matter was remanded a fresh commission was taken out and a plan was obtained. During the examination of the Commissioner and the surveyor, it is contended that certain ambiguities were noticed and that created an apprehension in the mind of the petitioner that the court

may decide that the property has not been properly identified and may non-suit him. Under the above circumstances, the petitioner moved an application for additional details under Order 10 Rule 2(2) of the Code to call upon the defendants to give evidence.

3. The court below held that the attempt was to fill up the lacuna in the evidence and it is not necessary to call upon the defendants to adduce evidence and dismissed the petition.

4. After remand, the Commissioner has filed his report and plan. The Commissioner as well as the Surveyor has been examined. If ultimately it is felt that there is no proper identification, it will be certainly open to the petitioner to make a prayer to the court for remitting the commission report for getting such details as are necessary for a proper adjudication of the suit. It is not necessary under the above circumstances that the defendants should be called upon to give evidence under Order 10 Rule 2(2) of

the Code. Further, if the petitioner has any other legal right to get details from the defendants, that will be available to the petitioner in the suit at the appropriate stage at the appropriate time.

With the above observation, this Original Petition is disposed of.

sb.

P. BHAVADASAN,
JUDGE