

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

OP(C).No. 900 of 2015 (O)

OS 304/2013 of III ADDL.SUB COURT, ERNAKULAM

PETITIONERS :

1. SUDAKSHINA, AGED 80 YEARS,
W/O. LATE THYKKOOTTATHIL RAMAKRISHNAN,
THYKKOOTTATHIL HOUSE, THEKKUMBAGAM, THRIPIUNITHURA.
2. T.R. PAVITHRAN,
S/O. RAMAKRISHNAN, THYKKOOTTATHIL HOUSE,
THEKKUMBAGAM, THRIPIUNITHURA.
3. T.R. PRAKASAN
S/O. RAMAKRISHNAN, THYKKOOTTATHIL HOUSE,
THEKKUMBAGAM, THRIPIUNITHURA.
4. T.R. BOSE @ CHANDRA BOSE,
S/O. RAMAKRISHNAN, THYKKOOTTATHIL HOUSE,
THEKKUMBAGAM, THRIPIUNITHURA.
5. T.R. SHAJI
S/O. RAMAKRISHNAN, THYKKOOTTATHIL HOUSE,
THEKKUMBAGAM, THRIPIUNITHURA.

BY ADV. SRI.K.P.SREEKUMAR

RESPONDENTS :

1. MOHANAN P. K., AGED 69 YEARS,
S/O. KANDAPPAN, THYKOOTATHIL, ERUVELI DESOM,
CHOTTANIKARA - 682 312.
2. JAYAN P.K., AGED 55 YEARS,
S/O. KANDAPPAN, THYKOOTATHIL, ERUVELI DESOM
CHOTTANIKARA - 682 312.
3. AYSHA, AGED 72 YEARS,
D/O.KANDAPPAN, THYKOOTATHIL, ERUVELI DESOM
CHOTTANIKARA - 682 312.

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4. SHOLY, AGED 60 YEARS,
D/O. KANDAPPAN AND W/O. APPU, THYKOOTATHIL
ERUVELI DESOM, CHOTTANIKARA - 682 312.

BY ADV. SRI.K.V.JAYACHANDRAN
BY ADV. SRI.RAJU V.MATHEW
BY ADV. SRI.MATHEW ABRAHAM (OLIYIL)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE PLAINT FILED BY THE PETITIONER BEFORE THE
IIIRD ADDITIONAL SUB COURT, ERNAKULAM.
- EXHIBIT-P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER
IN O.S 304/2013 DATED 30/04/2013.
- EXHIBIT-P3: TRUE COPY OF THE APPLICATION FOR ISSUING A COMMISSION IN
I.A 2741/2013 DATED 04/05/2013.
- EXHIBIT-P4: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS
HEREIN TO I.A 2741/2013 DATED 10/06/2013.
- EXHIBIT-P5: TRUE COPY OF THE MEMORANDUM OF AGREEMENT ENTERED INTO
BETWEEN THE PETITIONERS AND RESPONDENTS.
- EXHIBIT-P6: TRUE COPY OF THE SKETCH PREPARED BY THE SURVEYOR.
- EXHIBIT-P7: TRUE COPY OF THE I.A 559/2015 DATED 02/02/2015 FILED BY THE
RESPONDENTS.
- EXHIBIT-P8: TRUE COPY OF THE ADDITIONAL AFFIDAVIT SWORN BY THE
ADVOCATE OF RESPONDENTS.
- EXHIBIT-P9: TRUE COPY OF THE REPORT DATED 06/03/2013 DISTRICT
COLLECTOR THROUGH ADDITIONAL TAHSILDAR.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B.KEMAL PASHA, J.

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O.P.(C).No.900 of 2015

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Dated this the 26th day of June, 2015

J U D G M E N T

The parties were referred for mediation by the court below. The matter was successfully mediated and a settlement was arrived at, whereby the parties had agreed to measure out the property by the appointment of a Surveyor. Both sides willingly nominated one person as the Surveyor. When the Surveyor had measured out the property and produced the plan, the dispute has arisen from the part of the respondents herein, who are the plaintiffs in the suit. Their present demand is that entire mediation settlement has to be wiped out and the matter has to be decided by the court below through a trial.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

3. The learned counsel for the respondents has

pointed out that when the matter has been amicably settled in the mediation, it cannot be go back for a regular trial before the Civil court. On the contrary, in case the respondents have any disagreement with the plan prepared by the Surveyor, the only course open at present is to appoint another Surveyor and carry out the measurement once again, for which the matter has again to be referred for mediation. The said argument appears to be correct and that is the correct course that has to be adopted.

In the result, this Original Petition (Civil) is allowed and the court below is directed to refer the matter once again for mediation. In the mediation, the parties can come to terms with regard to the appointment of another Surveyor in the place of the earlier Surveyor and once again measurement can be carried out afresh.

Sd/-

B.KEMAL PASHA
JUDGE