

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

OP(C).No. 2744 of 2013 (O)

AGAINST THE ORDER IN IA NO.4425/2013 IN OS NO.703/2008 of II ADDITIONAL MUNSIF
COURT, ERNAKULAM

PETITIONER(S):

SINDHU
D/O THANKAPPAN, AGED 33 YEARS
PONNADAPADATHU HOUSE, MARADU P.O.
ERNAKULAM.

BY ADV. SRI.K.R.VINOD

RESPONDENT(S):

1. YESODHA, W/O LATE KANDARI, AGED 65 YEARS
PONNADAPARAMBIL HOUSE, MARADU P.O.
ERNAKULAM-682 019.
2. BOSE, S/O LATE KANDARI, AGED 49 YEARS
PONNADAPARAMBIL HOUSE, MARADU P.O.
ERNAKULAM-682 019.
3. SUNIL, S/O LATE KANDARI, AGED 46 YEARS
PONNADAPARAMBIL HOUSE, MARADU P.O.
ERNAKULAM-682 019.
4. JOSHY, S/O LATE KANDARI, AGED 43 YEARS
PONNADAPARAMBIL HOUSE, MARADU P.O.
ERNAKULAM-682 019.
5. KUNJUMON, S/O LATE KANDARI, AGED 37 YEARS
PONNADAPARAMBIL HOUSE, MARADU P.O.
ERNAKULAM-682 019.

R1 TO R5 BY ADV. SRI.A.BALAGOPALAN
R1 TO R5 BY ADV. SRI.A.RAJAGOPALAN
R1 TO R5 BY ADV. SRI.M.N.MANMADAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25-06-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 2744 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: THE COPY OF THE PLAINT IN O.S.NO.703/08.
EXHIBIT P2: THE COPY OF THE WRITTEN STATEMENT.
EXHIBIT P3: THE COPY OF THE COMMISSION APPLICATION.
EXHIBIT P4: THE COPY OF THE COMMISSION REPORT AND THE SKETCH.
EXHIBIT P5: THE COPY OF THE PETITION FILED BY THE PETITIONER TO REMIT BACK
THE COMMISSION REPORT.
EXHIBIT P6: THE COPY OF THE ORDER IN I.A.NO.6444/2010.
EXHIBIT P7: THE COPY OF THE JUDGMENT IN O.P.NO.772/11 DATED 21.2.2012.
EXHIBIT P8: THE COPY OF THE OBJECTIONS TO THE COMMISSION REPORT.
EXHIBIT P9: THE COPY OF THE SALE DEED NO.3687/93 OF THE RESPONDENTS.
EXHIBIT P10: THE COPY OF THE COMMISSION APPLICATION I.A.NO.4425/13.
EXHIBIT P11: THE COPY OF THE ORDER DATED 31.7.2013 IN I.A.NO.4425/13.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P. (C) No.2744 of 2013

Dated this the 25th day of June, 2015

JUDGMENT

Original Petition under Article 227 of the Constitution with following prayers:

“(i) To set aside Exhibit P11 order dated 31.07.2013 of the 2nd Additional Munsiff's Court, Ernakulam and allow Exhibit P10 commission application petition filed by the petitioner to measure and demarcate the property of the respondents covered by Exhibit P9 sale deed.

(ii) Direct the 2nd Additional Munsiff, Ernakulam to consider the question of acceptability of Exhibit P4 commission report before conducting final hearing of the suit and before passing the final judgment and decree.

(iii) to issue any other order or direction appropriate in the circumstances of the case.”

2. Heard the learned counsel for the petitioner and the respondent.

3. Ext.P11 order passed by the learned Munsiff is under challenge. It is an admitted case that Ext.P1 suit is pending before the court below and evidence in the matter is over. The suit is posted for

hearing. Even before starting the evidence, petitioner/plaintiff approached the court below with Ext.P10 application seeking remission of the commissioner's report and plan. It is averred in the affidavit filed in support of Ext.P10 that the commissioner did not measure out the property as described in the title deed of the respondents/defendants. According to the petitioner, her right of way is limited to plaint B schedule property and she does not claim any right over plaint C schedule property. Therefore, it is essential to identify the plaint B and C schedule properties in accordance with the document, contended the petitioner.

4. Learned Munsiff as per Ext.P11 order rejected the prayer of the petitioner to remit the commissioner's report and plan on finding that the respondents are the owner of plaint B schedule property. According to the learned counsel for the petitioner, this finding is erroneous. The petitioner's claim of right over plaint B schedule property is against the original owner of plaint B schedule property. Ext.P9 is the copy of the title deed of the respondents. Learned counsel for the petitioner contended that a mere look at the schedule to Ext.P9 document would show that the respondents cannot claim right of way over plaint B schedule property. Per contra, learned counsel for the respondents contended that the petitioner had amended the plaint accepting the commissioner's report and she is

trying to prolong the litigation with a frivolous petition in a suit, which is at the fag end of its trial. Learned counsel for the petitioner countered this argument by contending that the amendment to the plaint was only in respect of arithmetical corrections and it was not in accordance with the observations made by the Commissioner in the report and plan.

5. After hearing both sides, I am of the view that identity of plaint B and C schedule properties is the crux of the matter. There is some force in the contention raised by the petitioner that the disputed pathways mentioned as plaint B and C schedule properties in the plaint have not been properly identified by the commissioner. It is true that the parties have adduced evidence and the suit is nearing its end. But that shall not be a reason to disallow a claim for remitting the commissioner's report and plan, if legal requirements are satisfied for effective adjudication. Hence I am of the view that the petition can be allowed with following directions.

Original petition is allowed. Ext.P10 application is allowed. Court below is directed to remit the commissioner's report and plan in the case to the same commissioner and he shall inspect for identifying the plaint schedule properties with reference to the descriptions in the documents relied on by the parties. Parties are at liberty to submit a work memo to the commissioner. The court below shall take all steps to see that

the commissioner files a report within a period of one month from the date of remission. Court below shall post the matter on 13.07.2015 and thereafter within one month, the commissioner shall file a report.

A. HARIPRASAD, JUDGE.

cks