

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

OP(C).No. 1018 of 2015 (O)

PETITIONERS/PLAINTIFFS :

1. MADHAVAN MASTER, AGED 67 YEARS,
S/O.LATE KANNAN, RTD.TEACHER, NANDANAM,
NEAR RAILWAY STATION, CHERUVATHUR,
CHERUVATHUR VILLAGE OF HOSDURG TALUK,
KASARGOD DISTRICT.

2. P.P. SAROJINI, AGED 59 YEARS,
W/O.P.K.KUNHIRAMAN, RESIDING AT PATHUPOTHIPADU,
RAMA NILAYAM, POLLAYIL, P.O.CHERUVATHUR
CHERUVATHUR VILLAGE OF HOSDURG TALUK,
KASARGOD DISTRICT.

BY ADVS.SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU

RESPONDENTS/DEFENDANTS:

1. C.K.MOIDEENKUTTY, AGED 49 YEARS,
S/O.ANJILLATH VALIYA ASSINAR,
RESIDING AT CHOORATHOTTIL, KALATHIL, KADANKODE,
CHERUVATHUR VILLAGE OF HOSDURG TALUK,
KASARGOD DISTRICT-671 314

2. AKBAR ALI C.K., AGED 39 YEARS,
S/O.ANJILLATH VALIYA ASSINAR,
RESIDING AT CHOORATHOTTIL, KALATHIL, KADANKODE,
CHERUVATHUR VILLAGE OF HOSDURG TALUK,
KASARGOD DISTRICT-671 314.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(C).No. 1018 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 - COPY OF THE PLAINT IN OS NO.239/2014 IN THE COURT OF
MUNSIFFS HOSDURG DATED 1-7-2014.

EXT.P2 - COPY OF THE IA NO.1074/2014 DTD.2.7.2014.

EXT.P3 - COPY OF THE INTERIM REPROT DATED 4.8.2014 FILED BY
THE COMMISSIONER.

EXT.P4 - COPY OF THE IA 683/2015 DTD.18.2.2015.

EXT.P5 - COPY OF THE APPEAL MEMORANDUM IN CMA NO.19/2014
BEFORE THE SUB COURT HOSDURG DTD.20-10-2014.

EXT.P6 - COPY OF THE ORDER DATED 18.3.2015 IN IA.683/2015.

RESPONDENTS' EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/9/6/15

B.KEMAL PASHA, J.

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O.P.(C). No.1018 of 2015

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Dated this the 5th day of June, 2015

J U D G M E N T

A Commissioner was appointed by the court below through I.A.No.1074 of 2014 in O.S.No.239 of 2014. In the said I.A., there was a request for getting the property measured also. It seems that the Commissioner has filed an interim report by way of Exhibit P3. The Commissioner has also reported in Exhibit P3 that directions 1 and 2 could be complied with only on the appointment of a Surveyor. Along with Exhibit P3, the Commissioner had returned the warrant also. The court below has closed I.A.No.1074 of 2014 erroneously by taking a view that the order was complied with.

2. Aggrieved by the same, the petitioner has applied before the court below for re-opening I.A.No.1074 of 2014, through Exhibit P4. Through Exhibit P6, the court below

allowed Exhibit P4 and re-opened I.A.No.1074 of 2014. At the same time, the court below has taken a view that again a Commissioner shall be deputed only after the disposal of C.M.A.No.19 of 2014, which is pending before the Subordinate Judge's Court, Hosdurg filed on an order of temporary injunction in the suit.

3. It seems that the court below has committed an error in closing I.A.No.1074 of 2014 especially when the Commissioner has reported that the assistance of a Surveyor was required for noting down the matters contained in directions 1 and 2. The court below has allowed the I.A. filed by the petitioner, for getting I.A.No.1074 of 2014 re-opened. The court below has not made it clear as to why the party should wait till the disposal of C.M.A.No.19 of 2014 for deputing a Commissioner once again. It seems that the said view was taken by the court below is without any reason. That part of Exhibit P6 order, whereby the court below has postponed the issuance of the Commissioner's warrant, is only to be set aside and I do so.

In the result, this Original Petition (Civil) is allowed and that part of the order, whereby the court below has postponed the issuance of warrant to the Commissioner, is set aside. The court below is directed to issue the warrant to the Commissioner.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/5/6/15