

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP(C).No. 1151 of 2015 (O)

OS. NO.145/2013 OF MUNSIF COURT, PERUMBAVOOR.

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PETITIONERS:

- 1. POULOSEKUTTY, AGED 43 YEARS,
ADVOCATE, S/O.KORA, NJATTUMKALAYIL VEETIL,
VALAMBOOR KARA, KADAYIRUPPU P.O., KOLENCHERY.**
- 2. ICY N.M., AGED 51 YEARS,
S/O.MATHAI, NJATTUMKALAYIL VEETIL, VALAMBOOR KARA,
KADAYIRUPPU P.O., KOLENCHERY.**

BY ADV. SRI.BENNY VARGHESE.

RESPONDENTS:

- 1. ELDHOSE, DRIVER, AGED ABOUT 50 YEARS,
S/O.VARGHESE, KUTTIPARICHEL VEETIL,
VALAMBOOR KARA, PATTIMATTOM VILLAGE,
PATTIMATTAM P.O., PIN- 683 562.**
- 2. VARGHESE, S/O.PATHROSE, AGED 71 YEARS,
KUTTIPARICHEL VEETIL, VALAMBOOR KARA,
PATTIMATTOM VILLAGE, PATTIMATTAM P.O., PIN- 683 562.**
- 3. CHINNAMMA, AGED ABOUT 48 YEARS,
W/O.ELDHOSE, KUTTIPARICHEL VEETIL, VALAMBOOR KARA,
PATTIMATTOM VILLAGE, PATTIMATTAM P.O., PIN 683 562.**

**BY ADVS. SRI.P.THOMAS GEEVERGHESE,
SRI.TONY THOMAS (INCHIPARAMBIL).**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1:- THE TRUE COPY OF THE SALE DEED NO. 68/09 EXECUTED BY THE 1ST RESPONDENT.
- P2:- THE TRUE COPY OF THE PLAINT IN OS NO. 224/12 OF THE MUNSIFFS COURT, PERUMBAVOOR.
- P3:- THE TRUE COPY OF THE PLAINT IN OS. 145/2013 OF THE MUNSIFFS COURT, PERUMBAVOOR.
- P4:- THE TRUE COPY OF THE COMMISSION REPORT IN OS NO. 145/2013.
- P5:- THE SURVEY SKETCH PREPARED BY THE SURVEYOR.
- P6:- THE TRUE COPY OF THE OBJECTION IN THE COMMISSION REPORT FILED BY THE 2ND PETITIONER.
- P7:- THE TRUE COPY OF IA NO. 2096/2014 FILED BY THE 2ND PETITIONER TO REMIT BACK THE COMMISSION REPORT DTD. 20/09/2014.
- P8:- THE TRUE COPY OF THE OBJECTION IN EXT P7 FILED BY THE RESPONDENT.
- P9:- THE TRUE COPY OF THE ORDER IN IA NO 2096/2014 DTD. 04/03/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

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O.P.(C) No.1151 of 2015
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Dated this the 29th day of June, 2015

J U D G M E N T

The Commissioner's report and Surveyor's plan in two suits filed by the rival parties before the court below for perpetual injunction relating to an easement over right of a pathway, have come up. In Ext.P1, the width of the pathway is mentioned as 12 feet, in addition to a *thondu* in existence. In the survey plan the Surveyor has shown the width of the pathway as 4.50 metres.

2. According to the petitioners herein, the width has to be shown as 4.10 metres as the actual width is 4.10 metres. On that ground, the petitioners wanted to get the Commissioner's report and Survey plan corrected for which the petitioners had sought for the remission of Commissioner's report and Survey plan through Ext.P7 IA. The court below has dismissed the said IA through Ext.P9

order by finding that Surveyor could not be found fault with in noting down the pathway as 4.50 meters, as the surveyor has shown the pathway which he could find at the place. Even though IA stands dismissed, in Ext.P9 the court below had made mention that *“If after adducing evidence in the case, it is found that the Commission report and plan are insufficient to decide the suit, the same can be remitted back at that time.”* Ext.P9 order is self-speaking.

3. On hearing either side, and on perusing the records, this Court is of the view that presently Ext.P9 order does not require any interference at all, especially in the light of the aforesaid observations made by the court below in Ext.P9. Hence, this Original Petition is devoid of merits, and is only to be dismissed, and I do so.

In the result, this Original Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge