

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

OP(C).No. 1178 of 2015 (O)

**(AGAINST THE ORDER IN IA.NO.2301/2014 IN AS.NO. 193/2011 OF PRINCIPAL
SUB COURT, IRINJALAKUDA DATED 22/1/2015)**

PETITIONER :

**JOSEPH @ JOSE,
S/O.MALA PEREPPADAN KOCHAPPU @ JOSEPH, AGED 70,
VADAMA P.O,PIN- 680 131, THRISSUR DISTRICT.**

**BY ADVS.SRI.K.G.BALASUBRAMANIAN
SMT.AMBILY (PREMKUMAR)**

RESPONDENT :

**TOJO,
S/O.VELLANIKKARAN GEORGE, AGED 40 YEARS,
CHALAKUDY-680 301, THRISSUR DISTRICT.**

**BY ADVS.SRI. JOHN . K .GEORGE
SRI.P.P.BIJU**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(C).No. 1178 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF IA 2301/2014 IN AS 193/2011 IN THE COURT BELOW

EXT.P-2: TRUE COPY OF ORDER DATED 22.1.2015 IN IA 2301/2014.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

sts

B.KEMAL PASHA, J.

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O.P.(C) No.1178 of 2015
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Dated this the 19th day of June, 2015

J U D G M E N T

Ext.P2 order passed by the appellate court in I.A.No.2301/2014 in A.S.No.193/2011 is under challenge. The plaintiff, who is the appellant before the court below, has filed the said IA before the appellate court for the issuance of a fresh commission, with the assistance of a technical surveyor. Through Ext.P2 order, the court below has dismissed the said application on the ground that there was no serious challenge with regard to the earlier Commissioner's reports and plans available in the suit.

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

3. The apprehension forwarded by the learned counsel for the petitioner is that Ext.P2 order passed by the

court below is to the effect that the appeal itself is devoid of merits. In fact, Ext.P2 does not give any room for such an apprehension. The court below shall consider the appeal on merits, quite untrammelled by any of the observations made by the court below in Ext.P2 order. The court below shall consider the appeal with an open mind, and in the course of hearing, if it is felt that there is necessity to get another Commissioner's report and plan as requested for, the court below can exercise the powers to appoint a Commissioner, if required or in the alternative, if the appellate court finds that the matter has to be remitted to the court below, it is open to the appellate court to do so. Matters being so, there is no room for any such apprehension in the matter.

With the above said observations, this Original Petition is disposed of.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge