

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP(C).No. 1208 of 2015 (O)

I.A.NO.1076/2014 IN O.S.NO.97/2011 OF SUB COURT, MANJERI.

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PETITIONER:

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MUHAMMED HAJI, S/O. ALASAN HAJI,  
PALAYAKKODAN HOUSE, MALAPPURAM AMSOM,  
KEEZHMURI DESOM, HAJIYARPALLI PO,  
ERANAD TALUK.

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENT(S):

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1. SALIM, S/O. ALASAN KUTTY, PALAYAKKODAN HOUSE,  
MALAPPURAM AMSOM, KEEZHMURI DESOM,  
HAJIYARPALLI P.O, ERANAD TALUK, PIN-676 519.
2. ABDUL RASAK, S/O. ALASAN KUTTY,  
MALAPPURAM AMSOM, KEEZHMURI DESOM,  
HAJIYARPALLI P.O, ERANAD TALUK, PIN-676 519.
3. ABDUL MUNEER, S/O. ALASAN KUTTY,  
MALAPPURAM AMSOM, KEEZHMURI DESOM,  
HAJIYARPALLI P.O, ERANAD TALUK, PIN-676 519.
4. KHADEEJA, W/O. ALASAN KUTTY,  
MALAPPURAM AMSOM, KEEZHMURI DESOM,  
HAJIYARPALLI P.O, ERANAD TALUK, PIN-676 519.
5. ABOOBACKER, S/O. ALASAN, PALAYAKODDAN HOUSE,  
KODOOR AMSOM, MANGATTUPULAM DESOM,  
PERINTHALMANNA TALUK, PIN-676 519.
6. PALAYAKKODAN KUNJARAMMU,  
KODOOR AMSOM, MANGATTUPULAM DESOM,  
PERINTHALMANNA TALUK, PIN-679 321.
7. MAIMUM, W/O. LATE PALAYAKKODAN AALI,  
CHUNGATHARA AMSOM DESOM,  
P.O CHUNGATHARA, NILAMBUR TALUK, PIN-679 334.

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8. RAHOOF (MINOR), CHUNGATHARA AMSOM DESOM,  
P.O CHUNGATHARA, NILAMBUR TALUK, PIN-679 334,  
REPRESENTED BY HER GUARDIAN AND MOTHER  
MAIMUNA, (7TH RESPONDENT HEREIN)
9. SAFA (MINOR), CHUNGATHARA AMSOM DESOM,  
P.O CHUNGATHARA, NILAMBUR TALUK, PIN-679 334,  
REPRESENTED BY HER GUARDIAN AND MOTHER  
MAIMUNA, (7TH RESPONDENT HEREIN)
10. PATHUMMA, D/O.ALASAN & W/O. MALAYIL CHEKKU,  
NILAMBUR TALUK, CHUNGATHARA AMSOM,  
PALUNDA DESOM, P.O PALUNDA, PIN-676121.
11. KHADEEJA, D/O. ALASAN HAJI &  
W/O. CHALATTIL KALLADI KUNJU MUHAMMED,  
MUTTIPPADI, ERANAD TALUK,  
MELMURI AMSOM DESOM, P.O MELMURI, PIN-676517.

R1 TO R4 BY ADVS. SRI.P.A.MOHAMMED SHAH  
SRI.SOORAJ T.ELENJICKAL  
SMT.UMA  
SMT.P.M.MAZNA MANSOOR  
R5 & R 6 BY ADV. SRI.D.G.VIPIN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS NO. 97/2011 ON THE FILE SUB COURT, MANJERI, DATED 26.3.2011.
- EXHIBIT P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS 1 TO 4 IN OS NO. 97/2011 ON THE FILE SUB COURT, MANJERI, DATED 26.5.2011.
- EXHIBIT P3: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS 5 & 6 IN OS NO. 97/2011 ON THE FILE SUB COURT, MANJERI, DATED 26.5.2011.
- EXHIBIT P4: TRUE COPY OF THE IA NO 859/2011 IN OS NO.97/2011 ON THE FILE SUB COURT, MANJERI.
- EXHIBIT P5: TRUE COPY OF THE COMMISSION REPORT FILED BY THE COMMISSIONER ALONG WITH PLAN IN IA NO.859/2011 IN OS NO.97/2011 ON THE FILE SUB COURT, MANJERI, DATED 17.7.2012.
- EXHIBIT P6: TRUE COPY OF THE IA NO.1772/2012 IN OS NO.97/2011 ON THE FILE SUB COURT, MANJERI.
- EXHIBIT P7: TRUE COPY OF THE OBJECTION IN IA NO 1772/2012 IN OS NO.97/2011 ON THE FILE SUB COURT, MANJERI DATED 29.10.2012.
- EXHIBIT P8: TRUE COPY OF THE DEPOSITION OF THE COMMISSIONER RECORDED IN THE ENQUIRY IN IA NO.1772/2012 IN OS NO.97/2011 ON THE FILE SUB COURT, MANJERI DATED 23.1.2013.
- EXHIBIT P9: TRUE COPY OF THE ORDER IN IA NO.1772/2012 IN OS NO. 97/2011 PASSED BY THE SUB COURT, MANJERI, DATED 23.1.2013.
- EXHIBIT P10: TRUE COPY OF THE COMMISSION REPORT ALONG WITH PLAN FILED BY THE COMMISSIONER PURSUANT TO THE ORDER IN IA NO. 1772/2012 IN OS NO.97/2011 ON THE FILE SUB COURT, MANJERI, DATED 18.6.2014.
- EXHIBIT P11: TRUE COPY OF THE AFFIDAVIT IN IA NO.1076/2014 IN OS 97/2011 ON THE FILE SUB COURT, MANJERI, DATED 25.9.2014.
- EXHIBIT P12: TRUE COPY OF THE OBJECTION IN IA NO.1076/2014 IN OS NO.97/2011 ON THE FILE SUB COURT, MANJERI, DATED 14.10.2014.
- EXHIBIT P13: TRUE COPY OF THE ORDER IN IA NO.1076/2014 IN OS NO.97/2011 PASSED BY THE SUB COURT, MANJERI, DATED 28.2.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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**B. KEMAL PASHA, J.**

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O.P.(C) No.1208 of 2015  
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Dated this the 9<sup>th</sup> day of July, 2015

**J U D G M E N T**

Heard the learned counsel for the petitioner. Notice to respondents 6 to 10 are dispensed with and heard the learned counsel for the petitioner and other respondents.

2. Ext.P13 order is under challenge. Respondents 1 to 4 had filed I.A.No.1076 of 2014 for getting the Commissioner's report and plan set aside. By way of Ext.P13 order the court below has passed the following order: *“Heard. Commission Report is set aside as the plan and report are not sufficient to adjudicate the matter. A fresh Commissioner is appointed.”* No doubt, the said order is not a speaking order. The court below has not made it clear as to

why the plan and report were not acceptable and not sufficient to adjudicate the matters in controversy. The court below has to pass a speaking order. Ext.P13 is liable to be set aside.

In the result, this Original Petition is allowed. Ext.P13 order is set aside. The court below is directed to pass a speaking order on IA 1076/2014, after adverting to the contentions of either side.

**Sd/- B.KEMAL PASHA, JUDGE**

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[True copy]

P.S. to Judge