

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

OP(C).No. 1240 of 2015 (O)

IA NO. 4287/2014 IN OS 526/2010 of ADDL.MUNSIFF COURT, CHERTHALA

PETITIONERS/PLAINTIFFS 1 TO 3 :

- 1. THANKAPPAN, AGED 84 YEARS,
S/O. KOCHUKELAN, KOCHUVELIYIL, CHARAMANGALAMMURI
THANNEERMUKKOM SOUTH VILLAGE, CHERTHALATALUK
ALAPPUZHA DISTRICT.**
- 2. BINCY, AGED 25 YEARS,
D/O.THANKAMANI, KOCHUVELIYIL, CHARAMANGALAM MURI,
THENNEERMUKKOM SOUTH VILLAGE, CHERTHALA TALUK,
ALAPPUZHA DISTRICT.**
- 3. BLENTI, AGED 17 YEARS,
D/O. THANKAMANI (MINOR) -DO- -DO-
REPRESENTED BY HER FATHER AND NATURAL GUARDIAN
THANKAMONY, S/O.THANKAPPAN KOCHUVELIYIL,
CHARAMANGALAM MURI, THENNEERMUKKOM SOUTH VILLAGE,
CHERTHALA TALUK, ALAPPUZHA DISTRICT.**

**BY ADVS.DR.V.N.SANKARJEE
SRI.V.N.MADHUSUDANAN
SRI.S.SIDHARDHAN
SMT.R.UDAYA JYOTHI**

RESPONDENT/DEFENDANT :

**VILASINI, AGED 64 YEARS, W/O. RAJAPPAN
PADINJARE CHULLAVELI (VELAMVELI), KANNANKARA P.O.,
THANNEERMUKKOM NORTH VILLAGE, CHERTHALA TALUK,
ALAPPUZHA DISTRICT - 688 527.**

BY ADV. SRI. K. PRASAD

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF THE PLAINT DATED 30.11.2010 IN O.S.NO.526/2010 OF THE MUNSIFF'S COURT, CHERTHALA.
- EXT.P-2: TRUE COPY OF THE WRITTEN STATEMENT DATED 3.1.2011 FILED BY THE RESPONDENT IN EXT.P-1 SUIT.
- EXT.P-3: TRUE COPY OF THE COMMISSION REPORT DATED 8.12.2010 WITH ROUGH SKETCH IN EXT.P-1 SUIT.
- EXT.P-4: TRUE COPY OF THE COMMISSION APPLICATION DATED 19.12.2011 FILED BY THE PETITIONERS IN EXT.P-1 SUIT.
- EXT.P-5: TRUE COPY OF THE COMMISSION REPORT DATED 22.3.2014 WITH SURVEY PLAN FILED IN EXT.P-1 SUIT.
- EXT.P-6: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS IN EXT.P-5 COMMISSION REPORT AND PLAN.
- EXT.P-7: TRUE COPY OF THE PETITION DATED 31.10.2014 FILED BY THE PETITIONERS IN EXT.P-1 SUIT.
- EXT.P-8: TRUE COPY OF THE RESURVEY PLAN.
- EXT.P-9: TRUE COPY OF THE ORDER DATED 27.2.2015 PASSED BY THE LEARNED MUNSIFF IN EXT.P-7.
- EXT.P-10: TRUE COPY OF THE WITNESS SCHEDULE PRODUCED BY THE PETITIONERS IN EXT.P-1 SUIT.

**RESPONDENT(S)' EXHIBITS :
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- EXT. R1(A): COPY OF COMMISSION APPLICATION FILED BY THE PETITIONER/PLAINTIFF IN OS NO. 526/2010 OF MUNSIFF COURT CHERTHALA.
- EXT.R1(B): COPY OF OBJECTION TO THE COMMISSION REPORT FILED BY THE PETITIONER/PLAINTIFF IN OS NO. 526/10.

//TRUE COPY//

P.A. TO JUDGE

bp

K. ABRAHAM MATHEW, J.

O.P.(C)No. 1240 of 2015

Dated this the 12th day of October, 2015

J U D G M E N T

Petitioners are the plaintiffs in O.S.No.526 of 2010 on the file of Munsiff, Cherthala. The suit was for declaration that the plaint petitioners have right of easement of way through plaint-B schedule property belonging to the respondent/defendant. A commissioner was appointed to measure the property on the basis of the survey plan. Ext.P5 is the report and the plan filed by him. The petitioners filed Ext.P6 objection and Ext.P7 application to set aside the report. By Ext.P9 order, the learned Munsiff dismissed it. This is challenged in this O.P.

2. Heard.

3. I have gone through the pleadings of both parties. The petitioners admit the respondent's title to and possession of plaint-B schedule property. The respondent does not challenge the petitioner's title to and possession of the plaint-A schedule property. There is no dispute with regard to the boundary. It was unnecessary for the court

to appoint a commissioner to measure the property on the basis of survey plan. To this extent the commission report is irrelevant. So I do not propose to go into the merits of the impugned order.

In the result, this O.P is disposed of with a direction to the learned Munsiff to ignore the irrelevant facts mentioned in Ext.P5 report.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge