

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

OP(C).No. 160 of 2014 (O)

**AGAINST THE ORDER IN I.A.NO.1345/2013 IN O.S.NO.200/2013 OF THE MUNSIF
COURT, VAIKOM DATED 20.11.2013**

PETITIONER(S) :

- 1. BIJU JOSEPH, S/O.JOSPEH,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
P.J.JOHNSON, AGED 57 YEARS, S/O.JOHN,
ANATHIL HOUSE, ETTUMANOOR P.O., KOTTAYAM.**
- 2. JOSE MARIA, W/O.BIJU JOSPEH,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
P.J.JOHNSON, AGED 57 YEARS, S/O.JOHN,
ANATHIL HOUSE, ETTUMANOOR P.O., KOTTAYAM.**

**BY ADVS.SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS
SRI.LITHIN THOMAS**

RESPONDENT(S) :

**THARIYACHAN.M.T, AGED 47 YEARS,
S/O.THOMAS, MARANGOLIL HOUSE, THALAYOLAPARAMBU P.O.,
KOTTAYAM- 686 605.**

**BY SRI.K.RAMAKUMAR (SENIOR ADVOCATE)
ADVS. SRI.ABRAHAM P.GEORGE
SRI.K.VINODKUMAR (707/89)
SMT.M.SANTHY**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S NO.200/2013 DATED 05-08-2013 FILED BY THE PETITIONERS BEFORE THE MUNSIFF'S COURT, VAIKOM.

EXHIBIT P2: TRUE COPY OF THE PETITION FOR APPOINTMENT OF AN ADVOCATE COMMISSIONER IN I.A NO.1154/2013 IN O.S NO.200/2013 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, VAIKOM.

EXHIBIT P3: TRUE COPY OF THE COMMISSION REPORT IN O.S NO.200/2013 DATED 12-08-2013 ALONG WITH THE ROUGH SKETCH, MAHAZAR AND THE WRITTEN QUESTIONNAIRE SUBMITTED BY THE DEFENDANT.

EXHIBIT P4: TRUE COPY OF THE WRITTEN STATEMENT DATED 09-09-2013 FILED BY THE DEFENDANT IN O.S NO.200/2013 ALONG WITH A COUNTER CLAIM.

EXHIBIT P5: TRUE COPY OF THE OBJECTION DATED 09-09-2013 IN O.S NO.200/2013 FILED BY THE DEFENDANT.

EXHIBIT P6: TRUE COPY OF THE COMMISSION APPLICATION DATED 09-09-2013 FILED BY THE DEFENDANT AS I.A NO.1345/2013 IN O.S NO.200/2013.

EXHIBIT P7: TRUE COPY OF THE OBJECTION DATED 24-09-2013 FILED BY THE PLAINTIFF TO THE COMMISSION APPLICATION FILED BY THE DEFENDANT IN O.S NO.200/2013.

EXHIBIT P8: TRUE COPY OF THE WRITTEN STATEMENT DATED ON 21-10-2013 FILED BY THE PLAINTIFFS IN THE COUNTER CLAIM.

EXHIBIT P9: TRUE COPY OF THE ORDER DATED 20-11-2013 PASSED BY THE MUNSIFF COURT, VAIKOM IN I.A NO.1345/2013 IN O.S NO.200/2013.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

B.KEMAL PASHA, J.

.....
O.P.(C) No.160 of 2014
.....

Dated this the 24th day of June, 2015

J U D G M E N T

Ext.P9 order passed by the court below for appointing a Commissioner as prayed for by the respondent herein, is under challenge. The petitioners are the plaintiffs in the suit.

2. According to the petitioners, at first a Commission was appointed at the instance of the petitioners and when the Commissioner visited the property, a work memo was issued by the respondent for getting all the matters to be noted down. According to the petitioners, all these matters were noted down and once again Ext.P6 application was filed by the respondent for the issuance of another Commission. Even though that was stoutly opposed, the court below has allowed Ext.P6 IA through Ext.P9 order.

3. Heard the learned counsel for the petitioners and

the learned Senior Counsel for the respondent.

4. This Court has gone through Ext.P3 work memo as well as Ext.P6 IA. Apart from one or two matters requested to be noted down in Ext.P3, all the other matters sought to be noted down in Ext.P6 are totally different. The earlier commissioner was appointed through an order passed without hearing the petitioner herein. The court below has considered all the aspects and decided to issue a second Commission through Ext.P9 order. When different matters were sought to be ascertained, there was nothing wrong in passing Ext.P9 order. There is no illegality, irregularity or jurisdictional error committed by the Court below in passing Ext.P9 order. Therefore, there is absolutely nothing to interfere with Ext.P9 order.

In the result, this Original Petition stands dismissed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

O.P.(C)160/2014

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[True copy]

P.S. to Judge