

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

OP(C).No. 1309 of 2015 (O)

O.S.NO.211/2009 OF SUB COURT, MANJERI.

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PETITIONER:

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

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENT(S):

1. SALIM, S/O.ALASAN KUTTY,
PALAYAKKODAN HOUSE, MALAPPURAM AMSOM,
KEEZHMURI DESOM, HAJIYARPALLI P.O.,
ERANAD TALUK, PIN: 676 519, REP. BY POWER OF
ATTORNEY AZHUVALAPPIL MUHAMMED HAJI,
DOWNHILL, MALAPPURAM AMSOM, KEEZHUMURI.
2. ABDUL RASAK, S/O.ALASAN KUTTY,
MALAPPURAM AMSOM, KEEZHMURI DESOM,
HAJIYARPALLI P.O., ERANAD TALUK, PIN: 676 519,
REP. BY POWER OF ATTORNEY AZHUVALAPPIL
MUHAMMED HAJI, DOWNHILL, MALAPPURAM AMSOM,
KEEZHUMURI.
3. ABDUL MUNEER, S/O.ALASAN KUTTY,
MALAPPURAM AMSOM, KEEZHMURI DESOM,
HAJIYARPALLI P.O., ERANAD TALUK, PIN: 676 519,
REP. BY POWER OF ATTORNEY AZHUVALAPPIL
MUHAMMED HAJI, DOWNHILL, MALAPPURAM AMSOM,
KEEZHUMURI.
4. AZHUVALAPPIL KHADEEJA, W/O.ALASAN KUTTY,
PALAYAKKODAN HOUSE, MALAPPURAM AMSOM,
KEEZHMURI DESOM, HAJIYARPALLI P.O.,
ERANAD TALUK, PIN: 676 519, REP. BY POWER OF
ATTORNEY AZHUVALAPPIL MUHAMMED HAJI,
DOWNHILL, MALAPPURAM AMSOM, KEEZHUMURI.

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5. ABOOBACKER, S/O.ALSAN,
PALAYAKKODAN HOUSE, KODOOR AMSOM,
MANGAATTUPULAM DESOM,
PERINTHALMANNA TALUK, PIN: 676 519.
6. PALAYAKKODAN KUNJARAMMU,
KODOOR AMSOM, MANGATTUPULAM DESOM,
PERINTHALMANNA TALUK, PIN: 679 321.
7. PATHUMMA, D/O.ALASAN & W/O.MALAYIL CHEKKU,
NILAMBUR TALUK, CHUNGATHARA AMSOM,
PALUNDA DESOM, P.O.PALUNDA, PIN: 676 121.
8. KHADEEJA, D/O.ALASAN HAJI &
W/O.CHALATTIL KALLADI KUNJU MUHAMMED,
MUTIPPADI, ERANAD TALUK, MELMURI AMSOM DESOM,
P.O.MELMURI, PIN: 676 517.
9. MAIMUNA, W/O.LATE PALAYAKKODAN AALI,
CHUNGATHARA AMSOM DESOM,
P.O.CHUNGATHARA, NILAMBUR TALUK, PIN: 679 334.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1: TRUE COPY OF THE PLAINT IN OS NO.211/2009 ON THE FILE OF SUB COURT, MANJERI, DATED 25/9/2009.
- P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER/ 1ST DEFENDANT IN OS NO.211/2009 ON THE FILE OF SUB COURT, MANJERI.
- P3: TRUE COPY OF THE COMMISSION REPORT FILED BY THE COMMISSIONER ALONG WITH PLAN IN OS NO.211/2009 ON THE FILE OF SUB COURT, MANJERI, DATED 26/8/2014.
- P4: TRUE COPY OF THE IA NO.1112/2014 IN OS NO.211/09 ON THE FILE OF SUB COURT, MANJERI.
- P5: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENTS 1 TO 4/PLAINTIFFS IN IA. NO.1112/2014 IN OS NO.211/2009 ON THE FILE OF SUB COURT, MANJERI, DATED 4/11/2014.
- P6: THE TRUE COPY OF IA NO.1237/2014 IN OS NO.211/2009 ON THE FILE OF SUB COURT, MANJERI, DATED 4/11/2014.
- P7: TRUE COPY OF THE ORDER IN IA NO.1112/2014 IN OS NO.211/2009 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. 1309 of 2015
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Dated this the 8th day of June, 2015

J U D G M E N T

Heard the learned counsel for the petitioner.

2. It seems that Ext.P3 Commissioner's report and plan have been filed by the Commissioner before the court below. Detailed objections have been filed by the petitioner for the Commissioner's plan and report, vide Ext.P4. It seems that the respondents have also preferred Ext.P6 detailed objections. The court below has passed Ext.P7 order in the following lines:

*“Heard. I.A.1112/2014 and I.A.1237/2014
disposed of by a common order.
Commission Report and plan are remitted*

to the same Commissioner for looking into matters referred in the petition.”

3. As rightly pointed out by the learned counsel for the petitioner, it seems that the court below has relegated the questions with regard to the merits or otherwise of the objections filed by both the sides to be decided by the Commissioner, instead of entering a finding whether the Commissioner's plan and report have to be set aside or remitted. The court below ought to have entered a finding with regard to the objections raised by the both the sides in respect of Ext.P3. Now, it seems that the matter is left to the mercy of the Commissioner to enter a finding whether he had done the job correctly or not. Much discussion is not required to conclude that Ext.P7 order is *per se* illegal.

In the result, this Original Petition is allowed and Ext.P7 order is set aside. The court below is directed to enter a finding with regard to the merits of the objections raised by either sides as against Ext.P3 and to take a

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decision as to whether the matter has to be set aside, or
remitted to the Commissioner or not.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge