

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP(C).No. 207 of 2014 (O)

OS 1665/2009 OF MUNSIF COURT, IRINJALAKUDA

PETITIONER(S):

SUJATHA SURENDRAN, AGED 44 YEARS,
D/O.KAMALAKSHIAMMA,
KUTTUMUKU DESOM, PALLATH HOUSE,
THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

1. AMMINI AMMA @ PARUKUTTY AMMA,
PATTATHIL HOUSE, THRIKKUR VILLAGE DESOM,
MUKUNDAPURAM TALUK-680001.
2. BINDHU, AGED 37 YEARS,
D/O.PARUKUTTY AMMA @ AMMINI AMMA, PATTATHIL HOUSE,
THRIKKUR VILLAGE DESOM, MUKUNDAPURAM TALUK-680001.
3. SAJITHA MANOJ KUTTY,
D/O.KAMALAKSHIAMMA, KUTTUMUKU DESOM, PALLATH HOUSE,
THRISSUR TALUK-680001.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

OP(C).No. 207 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE PLAINT IN OS NO.1665 OF 2009 ON THE FILE OF THE MUNSIFF COURT, IRINJALAKUDA DATED NIL.**
- P2: COPY OF THE JUDTMENT IN AS NO.156 OF 2010 DATED 13.2.2013 ON THE FILE OF THE SUB COURT, IRINJALAKUDA.**
- P3: COPY OF THE ORDER PASSED ON IA NO.5272 OF 2013 IN OS NO.1665 OF 2009 DATED 18.12.2013 ON THE FILE OF THE MUNSIFF COURT, IRINJALAKUDA.**
- P4: COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN OP(C)NO.69 OF 2014 DATED 9.1.2014.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B.KEMAL PASHA, J.

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O.P.(C).No.207 of 2014

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Dated this the 29th day of June, 2015

J U D G M E N T

It seems that a strange order has been passed by the court below in I.A.No.5272 of 2013 in O.S.No.1665 of 2009. The I.A. relates to the appointment of a Commissioner and Surveyor as the suit is one for fixation of boundary. The court below, through Exhibit P3 order has appointed a Commissioner. At the same time, the court below has made mention in the order that *"In case, the report is not filed on or before 2.1.2014 petition stands dismissed."* Exhibit P3 order is patently illegal, irregular and improper. As the Commissioner has failed to file a report as ordered by the court below, there is an automatic dismissal of the said I.A. in this case. It was not due to the laches on any of the parties to the suit that the Commissioner had not filed the report in time as ordered by the court below. Matters being

so, Exhibit P3 order is liable to be set aside.

In the result, this Original Petition (Civil) is allowed and Exhibit P3 stands set aside. The I.A. stands allowed. The court below shall appoint another Commissioner to execute the Commissioner's warrant with the assistance of a Surveyor.

Needless to say, the petitioner is liable to pay the Bata as may be ordered by the court below.

Sd/-

B.KEMAL PASHA
JUDGE