

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

OP(C).No. 1535 of 2015 (O)

I.A.NO.356/2015 IN O.S.NO.227/2013 OF MUNSIF COURT, VAIKOM

PETITIONER(S) :

- 1. SABU, AGED 40 YEARS,
FARMER, S/O. KUTTAPPAN, POIYYANIYIL HOUSE,
KIZHAKKEKARA, VADAYAR, VAIKOM, KOTTAYAM DISTRICT.**
- 2. VIVEKANANDAN, AGED 52 YEARS,
S/O.KUTTAPPAN(LATE), POIYYANIYIL HOUSE,
KIZHAKKEKARA, VADAYAR, VAIKOM, KOTTAYAM DISTRICT.**
- 3. RADHA, AGED 62 YEARS,
W/O.GOPALAN, ENJARIKUNNU HOUSE, S.H.MOUNT P.O.,
KIZHAKKEKARA, VADAYAR, VAIKOM, KOTTAYAM DISTRICT.**
- 4. SADANANDAN, AGED 58 YEARS,
S/O.KUTTAPPAN, RESIDING AT CHAKKALA COLONY, VADAYAR P.O.,
FROM POIYYANIYIL HOUSE, KIZHAKKEKARA, VADAYAR,
VAIKOM, KOTTAYAM DISTRICT.**
- 5. PONNAPPAN, AGED 53 YEARS,
S/O. KUTTAPPAN, RESIDING AT KORICKAL COLONY, VADAYAR P.O.
FROM POIYYANIYIL HOUSE, KIZHAKKEKARA, VADAYAR,
VAIKOM, KOTTAYAM DISTRICT.**
- 6. KALALASANAN, AGED 47 YEARS,
S/O.KUTTAPPAN, POIYYANIYIL HOUSE, KIZHAKKEKARA,
VADAYAR, VAIKOM, KOTTAYAM DISTRICT.**
- 7. THILAKAMMA, AGED 44 YEARS,
W/O.ASHOKAN, MUNDODICHIRAYIL HOUSE,
KIZHAKKEKARA, VADAYAR P.O., FROM POIYYANIYIL HOUSE,
KIZHAKKEKARA, VADAYAR, VAIKOM, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN**

OP(C).No. 1535 of 2015 (O)

RESPONDENT(S) :

1. THE DISTRICT COLLECTOR,
KOTTAYAM, PIN- 686 001.
2. PUNJA SPECIAL OFFICER,
PUNJA SPECIAL OFFICE, KOTTAYAM.
3. AGRICULTURE OFFICER,
THALAYOLAPARAMBU, KRISHI BHAVAN, THALAYOLAPARAMBU.
4. PROJECT ENGINEER'S OFFICER,
SREE PADMAM PUTHENVEEDU, BUILDING KMC, 732 C,
OPPOSITE GIRLS HIGHER SECONDARY SCHOOL, KAYAMKULAM,
(KLDC OFFICE), REPRESENTED BY ITS PROJECT ENGINEER.
5. PRESIDENT, ARAVANKARI,
PADASEDKARA SAMITHY, VADAYAR.
6. M.P.GOPALAN,
AGED 68 YEARS, PENSIONER, S/O. PADMANABHAN,
BINDU NIVAS, KIZHAKKEKARA, VADAYAR P.O., VAIKOM.
7. SANTHA, AGED 65 YEARS,
PENSIONER, W/O. GOPALAN, BINDU NIVAS,
KIZHAKKEKARA, VADAYAR P.O., VAIKOM.

R1 TO R4 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
R5 TO R7 BY ADVS. SRI.P.M.NATESAN
SRI.RIJO JOY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 12-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT-P1: A TRUE COPY OF THE PLAINT IN O.S.NO.227/2013 OF THE MUNSIFF'S COURT, VAIKOM.**
- EXHIBIT-P2: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS/DEFENDANTS 6 AND 7.**
- EXHIBIT-P3: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY ADDITIONAL DEFENDANTS 8 TO 12 IN O.S.NO.227/2013.**
- EXHIBIT-P4: A TRUE COPY OF THE I.A NO.356/2015 IN O.S.NO.227/2013.**
- EXHIBIT-P5: A TRUE COPY OF THE PLAINT IN O.S NO.17/2012 OF THE MUNSIFF'S COURT VAIKOM.**
- EXHIBIT-P6: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS 1 AND 2 HEREIN WHO ARE THE DEFENDANTS 1 AND 2 IN O.S.NO.17/2012.**
- EXHIBIT-P7: A TRUE COPY OF THE COMMUNICATION REPORT DATED 20.10.2012 IN O.S.NO.17/2012 OF THE MUNSIFF'S COURT.**
- EXHIBIT-P8: A TRUE COPY OF THE ROUGH SKETCH PRODUCED ALONG WITH EXT.P7.**
- EXHIBIT-P9: A TRUE COPY OF THE ORDER DATED 08.06.2015 IN IA.NO.356/2015 IN O.S NO.227/2013.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K.ABRAHAM MATHEW J.

O.P.(C) No.1535 of 2015

Dated this the 12th day of November, 2015

JUDGMENT

Petitioners are the plaintiffs in O.S.No.17 of 2012 of Munsiff, Vaikom. The suit is to declare that the plaint schedule way is a public way. There is also a prayer for consequential injunction. The petitioners filed an application to appoint a commissioner to measure the property on the basis of survey plan. Learned Munsiff has dismissed it by Ext P9 order. This is challenged.

2. The learned Munsiff dismissed the commission application on the ground that the measurement of the property is not necessary in the nature of the case. If they have to get a decree, the petitioners have to establish that the plaint schedule way is a public way. For that measurement of the properties involved in the case on the basis of survey plan is absolutely unnecessary. Measurement on the basis of survey plan is beyond the scope of the suit. The learned Munsiff has rightly dismissed the application. No interference is called for.

In the result, this Original Petition is dismissed.

Sd/-

**K.ABRAHAM MATHEW
JUDGE**

cms

/True copy/

P.S.to Judge