

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

OP(C).No. 3824 of 2013 (O)

**IA NO. 1172/2012 IN IA NO. 893/2011 IN OS NO. 105/2009 OF THE MUNSIF -
MAGISTRATE COURT, PATTAMBI**

PETITIONER :

**SMT. M.P. MINI, AGED 44 YEARS,
D/O.KUNHETH NADUVIL NARAYANAN NAIR,
MANNUR PANAYAPPALLI, 'MINI MANDIRAM'
P.O.ARANGOTTUKARA, VIA.VARAVUR, THALAPPILLY TALUK,
THRISSUR DISTRICT-680593.**

**BY ADVS.SRI.THIYYANNOOR RAMAKRISHNAN
SRI.ARUN KUMAR.P
SMT.AMBIKA RADHAKRISHNAN**

RESPONDENT :

**MANI
S/O.THAZHUTHUPARAMBIL KARAPPAN, KOODALLUR AMSOM
MANNIAMPERUMBELAM DESOM, OTTAPPALAM TALUK
PALAKKAD DISTRICT, PIN 686595.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 02-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE PRELIMINARY JUDGMENT IN O.S.105/09 BEFORE THE MUNSIFF-MAGISTRATE COURT, PATTAMBI.
- EXHIBIT-P2: TRUE COPY OF THE FINAL DECREE PETITION IN I.A.NO.893/2011 IN O.S.105/09 BEFORE THE MUNSIFF-MAGISTRATE COURT, PATTAMBI.
- EXHIBIT-P3: TRUE COPY OF THE COMMISSIONER'S REPORT DATED 16.07.2012 IN I.A.NO.893/2011 IN O.S.105/09 FILED BY ADVOCATE COMMISSIONER.
- EXHIBIT-P4: TRUE COPY OF THE OBJECTION FILED BY THE HUMBLE PETITIONER IN I.A.NO.893/2011.
- EXHIBIT-P5: TRUE COPY OF OBJECTION FILED BY RESPONDENTS IN 3 & 4 IN I.A.NO.893/2011.
- EXHIBIT-P6: TRUE COPY OF OBJECTION FILED BY RESPONDENT NO.5 IN I.A.NO.893/2011.
- EXHIBIT-P7: TRUE COPY OF THE PETITION IN I.A.NO.1172/2012 IN I.A.893/2011 IN O.S.105/09 TO SET ASIDE COMMISSION REPORT.
- EXHIBIT-P8: TRUE COPY OF THE ORDER IN I.A.NO.1172/12 IN I.A.NO.893/11 IN O.S.105/09.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

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B.KEMAL PASHA, J.

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O.P.(C). No.3824 of 2013

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Dated this the 2nd day of June, 2015

J U D G M E N T

For passing a final decree in the partition suit, a Commissioner was appointed by the court below. The preliminary decree was passed by finding that the property shall be partitioned by metes and bounds into six equal shares and one such share shall be allotted to the plaintiff. The present respondent is a purchaser of one of such shares from one of the sisters of the petitioner. It seems that the Commissioner has visited the property and has prepared Exhibit P3 report and plan. It seems that in the plan, the property has been divided into six shares. B schedule item is the norther most share and G schedule

item is the southern most share. All along the eastern side of the properties, a road is there. Over and above it, a tarred Panchayth road is passing through the northern side of the whole property. The said B schedule item is seen set apart towards the share of the respondent herein. It is evident that the said B schedule item is the most commercially important property, as it has road frontage through the whole extent of it, on the northern side as well as the eastern side. Even then its extent is shown as 26.46 cents. The extent of C schedule, which is sandwiched by B schedule and D Schedule is also 26.46 cents only. On a perusal of the commission report and plan, it seems that it is a futile exercise made by the Commissioner to have a division like the one noted in Exhibit P3. Specific objections were raised by the petitioner before the court below and the petitioner has requested the court below to appoint another Commissioner by setting aside Exhibit P3. Instead of that, the court below has chosen to remit the commissioner's

report and plan to the very same Commissioner though Exhibit P8 order.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The division made by the commissioner through Exhibit P3 cannot be treated as a division by metes and bounds. It seems that patent injustice has been resulted through the acts of the Commissioner in filing Exhibit P3. In such case, even if the Commissioner is asked to consider the matter again, this Court is of the view that no purpose would be served. Exhibit P3 is liable to be set aside, and another Commissioner has to be appointed for preparing a fresh report and plan especially when the preliminary decree was passed without any objections.

In the result, Exhibit P8 order stands set aside. Exhibit P3 commissioner's report and plan are also set aside. The court below is directed to appoint another Advocate Commissioner, who is positively a senior member of the Bar

to effect a division properly by metes and bounds.

This Original Petition (Civil) is disposed as above.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/3/6/15