

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP(C).No. 4066 of 2013 (O)

OS 1725/2005 of III ADDL. MUNSIFF COURT, THRISSUR

PETITIONERS/RESPONDENTS/DEFENDANTS :

- 1. VIDYADHARAN, S/O.KOMBAYIL KOLATH KRISHNAN NAIR,
OLARIKKARA DESOM, ARANATTUKARA VILLAGE, THRISSUR TALUK**
- 2. BHAGEERADHI,
D/O.KOMBAYIL KOLATH KRISHNAN NAIR, OLARIKKARA DESOM,
ARANATTUKARA VILLAGE, THRISSUR TALUK**

**BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.K.RASHMI**

RESPONDENTS/PETITIONERS/PLAINTIFFS :

- 1. VINCENT,
S/O.CHIRAYATH DEVASSY, PULLAZHI VILLAGE & DESOM,
THRISSUR TALUK, THRISSUR DISTRICT - 680 001.**
- 2. ALICE,
W/O.CHIRAYATH VINCENT, PULLAZHI VILLAGE & DESOM,
THRISSUR TALUK, THRISSUR DISTRICT - 680 001.**

R1 & R2 BY ADV. SRI.DINESH MATHEW J.MURICKEN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE PLAINT IN O.S.1725/05 OF IIIRD ADDL.MUNSIFF COURT, THRISSUR.

EXHIBIT P2 : TRUE COPY OF THE WRITTEN STATEMENT IN O.S.1725/05 OF III ADDL.MUNSIFF COURT, THRISSUR.

EXHIBIT P3 : TRUE COPY OF THE RERPORT AND SKETCH SUBMITTED BY THE ADVOCATE COMMISSIONER IN O.S.NO.1725/05 OF III ADDL.MUNSIFF COURT, THRISSUR.

EXHIBIT P4 : TRUE COPY OF THE I.A.11585/10 IN O.S.NO.1725/05 OF III ADDL.MUNSIFF COURT, THRISSUR.

EXHIBIT P5 : TRUE COPY OF COUNTER IN I.A.11585/10 IN O.S.1725/05 OF III ADDL.MUNSIFF COURT, THRISSUR.

EXHIBIT P6 : TRUE COPY OF THE ORDER DATED 23/09/13 IN I.A.11585/10 IN O.S.NO.1725/05 OF III ADDL.MUNSIFF COURT, THRISSUR

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
O.P.(C) No.4066 of 2013
.....

Dated this the 22nd day of June, 2015

J U D G M E N T

~ ~ ~ ~ ~

Ext.P6 order in I.A.No.11585/2010 in O.S.No.1725/2005 of the III Additional Munsiff Court, Thrissur is under challenge. The suit was originally filed as one for fixation of boundary by the plaintiffs, who are the respondents herein on the specific averment that their property is in Survey No.258/4 of Aranattukara village. The plaintiffs wanted to get the boundary in between their property in Survey No.258/4 and the property of the defendants in Survey No.258/1 fixed.

2. A Commission was appointed in the matter. The Commissioner filed a report appended with the plan prepared by the Surveyor. It seems that the Commissioner has reported that some more portions of the properties in Survey No.258/1 is also in the possession of the plaintiffs.

Through Ext.P4 amendment application filed as I.A.No.11585/2010, the plaintiffs have sought for a series of amendments. It seems that even the relief sought for fixation of boundary has also been removed. When such extensive amendments were sought for and the same were stoutly opposed by the petitioners herein, the court below ought to have considered all the contentions of the parties. Instead of that, the court below has passed Ext.P6 order by stating that the amendment is one for introducing a new survey number and in such case, the defendants would get an opportunity to file an additional written statement in the matter and, therefore, the amendment could be allowed.

3. Heard learned counsel for the petitioners and learned counsel for the respondents.

4. Ext.P6 order cannot be treated as a speaking order. In Ext.P6, the court below has not addressed the grounds raised by the plaintiffs for seeking such an amendment and the specific contentions resorted to by the

petitioners herein by opposing the amendments. When such matters have not been addressed by the court below, Ext.P6 order is not sustainable.

In the result, this O.P.(Civil) is allowed and Ext.P6 order is set aside. The court below shall consider the matter afresh and pass appropriate orders in accordance with law, after hearing both sides.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/22/06

// True Copy //

PA to Judge