

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

OP(C).No. 4078 of 2013 (O)

AGAINST THE ORDER I.A.NO.575/2013 IN O.S .NO.299/2010 of MUNSIFF COURT, KALPETTA
DATED 06.07.2013

PETITIONER(S):

M/S. HARRISONS MALAYALAM LIMITED
ARRAPETTA ESTATE
REPRESENTED BY ITS SENIOR MANAGER(LEGAL) SRI.M.V.H.MENON
24/1624, BRISTOW ROAD, WILLINGTON ISLAND
KOCHI-682 003.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH MENON
SRI.BENNY P. THOMAS
SRI. JOHN MATHAI K.

RESPONDENT(S) :

NARASU
S/O. SANKARAN MESTRI, VIDHU NIVAS, ANNAKAPP,
MELE ARRAPETTA, MEPPADI P.O., MOOPPAINADU VILLAGE
VYTHIRI TALUK, WAYANAD DISTRICT-673 577.

BY ADV.DR.K.P.PRADEEP
BY ADV.SRI.K.N.VIKRAMATHITHYAN PILLAI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-02-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 4078 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : COPY OF THE PLAINT DTD.20.11.2010 IN OS NO.229/2010 ON THE FILE OF THE COURT OF THE MUNSIF, KALPETTA.

EXT.P2 : COPY OF THE WRITTEN STATEMENT DTD.2.2.2011 FILED BY THE DEFENDANT IN OS NO.299/2010 ON THE FILE OF THE COURT OF THE MUNSIF, KALPETTA.

EXT.P3 : COPY OF THE REPORT AND PLAN DTD.7.5.2013, FILED BY THE ADVOCATE COMMISSIONER IN OS NO.299/2010, ON THE FILE OF THE COURT OF THE MUNSIF, KALPETTA.

EXT.P4 : COPY OF THE IA NO.575/2013 IN OS NO.299/2010, ON THE FILE OF THE COURT OF THE MUNSIF, KALPETTA, DTD.7.6.2013.

EXT.P5 : COPY OF THE ORDER DTD.6.7.2013, IN IA NO.575/2013 IN OS NO.299/2010, ON THE FILE OF THE COURT OF MUNSIF, KALPETTA.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.4078 of 2013

Dated this the 24th day of February, 2015

JUDGMENT

The writ petitioner is the plaintiff in O.S.No.299 of 2010 before the Munsiff Court, Kalpetta.

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

3. The suit is one for mandatory and prohibitory injunction reliefs. Case of the petitioner, in short, is thus: The plaint A schedule property belongs to the petitioner. Plaint B schedule is part of plaint A schedule. The defendant/respondent has no manner of right or possession over plaint A schedule property. He tried to trespass into the property and hence the suit was filed. A commission was appointed for local inspection and Ext.P3 is the second report and plan submitted by the commissioner after inspecting the property with due notice to both sides. Dissatisfied with Ext.P3 report and plan, the petitioner requested the trial court to remit the commissioner's report and plan for fixing the boundaries of plaint B schedule with the help of District Survey Superintendent and with the aid of Field Measurement Book (FMB) of re-survey Nos.99 and 107 and its sub-divisions by using theodolite equipments and angular measurement

instruments. According to the petitioner, this type of a local inspection with the equipments will show that plaint B schedule property is part of plaint A schedule.

4. Court below as per Ext.P5 order dismissed the application finding that the petitioner could not make out any reason to seek remission of the commissioner's report and plan.

5. Learned counsel for the petitioner submitted that the court below should have allowed the application and the commissioner's report and plan should have been remitted for proper identification. Ext.P3 report and plan by the commissioner does not show the fact that he has perused documents pertaining to re-survey Nos.99 and 107 with its sub-divisions for identification. It is, therefore, the contention of the learned counsel for the petitioner that remission of the commissioner's report and plan is highly essential for establishing the case of the petitioner. Per contra, learned counsel for the respondent submitted that two times the petitioner had taken out commission and Ext.P3 report and plan was submitted by the commissioner after conducting proper inspection with the help of revenue records. It is true that it may not be proper to shut out evidence in a case of this nature, especially when the dispute is pertaining to a narrow strip of property adjoining a large extent of land. True, it is the duty of the court below to see that the property in dispute is properly identified. The only question is whether this can be agitated at the time of adducing evidence

or whether it has to be done before the trial begins. Learned counsel for the respondent relying on **Kanaran Nair v. Madhavan Nair (1996 KHC 34)** contended that if at all remission of the report is required, it can be relegated to the stage of evidence in the case. The suit is of the year 2010. The dispute is only in respect of a strip of land which is said to be part of plaint A schedule, a larger extent of land. The court below shall endeavour to ascertain the identity of plaint B schedule at the time of trial, for which the petitioner shall be given an opportunity to adduce evidence and also to examine the commissioner, if so advised. If the court below finds that the evidence adduced at the time of trial do not reveal the exact identity of plaint B schedule property, it shall consider remission of the commissioner's report and plan for identifying the property in dispute for passing an effective decree. In that event, the petitioner is free to apply for remission of the commissioner's report and plan and to take out a commission for collecting relevant inputs for proper identification of plaint B schedule.

With these observations, the original petition is disposed of.

A. HARIPRASAD, JUDGE.

cks