

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

OP(C).No. 1717 of 2015 (O)

OS 279/2013 of MUNSIF COURT, PAYYANNUR

PETITIONER :

**MUKRI RAHMATH, AGED 39 YEARS,
D/O. NABEESUMMA, NEAR THULUVANNUR TEMPLE,
THAYINERI, PAYYANNUR P.O., KANNUR DISTRICT**

**BY ADVS.SRI.M.SASINDRAN
SRI.SATHEESHAN ALAKKADAN**

RESPONDENT :

**MATTOOKKARATHI ABDUL RAHIMAN, AGED 57 YEARS,
S/O. ABDULLA, PAYYANNUR AMSOM DESOM,
PAYYANNUR P.O., KANNUR DISTRICT - 670001**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

OP(C).No. 1717 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE PLAINT IN OS NO. 279 OF 2013 ON THE FILE OF MUNSIFF COURT, PAYYANNUR.
- P2: COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER HEREIN IN OS NO. 297/2013 ON THE FILE F MUNSIFFS COURT, PAYYANNUR.
- P3: COPY OF THE INTERIM REPORT DT 19/2/2015 SUBMITTED BY THE ADVOCATE COMMISSIONER IN OS NO. 292013.
- P4: COPY OF THE EYE SKETCH PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER ALONG WITH HIS INTERIM REPORT DT 10/2/2013
- P5: COPY OF THE IA NO. 434 OF 2015 IN OS NO. 279/2013.
- P6: COPY OF THE COUNTER FILED BY THE RESPONDENT IN IA NO. 434/2015 IN OS NO. 279 OF 2013.
- P7: COPY OF THE ORDER DT 2/6/2015 IN IA NO. 434 OF 2015 IN OS NO. 279/2013 ON THE FILE OF MUNSIFF'S COURT PAYYANNUR.
- P8: COPY OF THE SKETCH PLAN IN RESPECT OF THE 10 CENTS OF LAND INTEND TO SELL BY THE PETITIOENR TO THE RESPONDENT.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. ABRAHAM MATHEW, J.

O.P.(C)No.1717 of 2015

Dated this the 16th day of September, 2015

J U D G M E N T

Petitioner is the defendant in O.S.No.229 of 2013, which is for specific performance of agreement for sale filed by the respondent. The dispute is with regard to the identity of the property covered by the agreement. On the application of the respondent, the trial court appointed a commissioner. The commissioner submitted an interim report and a rough sketch, which are marked as Ext.P3 and Ext.P4 in this O.P. The petitioner filed IA.No.434 of 2015 to remit the report. By Ext.P7 the learned Munsiff dismissed it. The legality is challenged in this O.P.

2. Heard.

3. The facts of the case suggest that it is not at all necessary for the trial court to ascertain the identity of the property covered by agreement for sale at this stage. The court may pass a preliminary decree for specific performance if the respondent proves his entitlement to it. Thereafter, the identity may be ascertained when an application is filed for passing the final decree and

executing sale deed. The petitioner may raise any objection he may have when the report is filed.

With the above observation this O.P is closed. The court need not take into consideration the report already available in the case.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge