

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

OP(C).No. 1728 of 2015 (O)

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AGAINST THE ORDER/JUDGMENT IN OS 284/2007 of MUNSIF
COURT,VARKALA
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PETITIONER(S):

- 1. BHANU ASHA AGED 55 YEARS
VASANTHOM, MUNDAYIL, VARKALA.P.O.
THIRUVANANTHAPURAM DISTRICT.**
- 2. SATHEESH CHANDRAN
S/O.BHANU, VASANTHOM, MUNDAYIL
VARKALA.P.O., THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.R.ANILKUMAR

RESPONDENT(S):

**DEVADASAN
NANDANAM, PUTHENCHANTHA, VETTOOR VILLAGE
VARKALA.P.O., THIRUVANANTHAPURAM.P.O., PIN-695 141.**

R1 BY ADV. SRI.S.D.ASOKAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

OP(C).No. 1728 of 2015 (O)

PETITIONER(S)' EXHIBITS

EXT.P1- THE TRUE PHOTOCOPY OF THE PLAINT IN OS NO.284/07 NOW PENDING IN THE MUNSIFF'S COURT, VARKALA DATED 05.10.2007.

EXT.P2- THE TRUE PHOTOCOPY OF THE OFFICE MEMORANDUM GUIDELINES FOR FUNCTIONING OF DGR EMPANELLED EX-SERVICEMEN FOR SECURITY SERVICES ISSUED BY MINISTRY OF DEFENCE ON 9TH JULY,2012.

EXT.P3- THE TRUE PHOTOCOPY OF THE COMMISSION REPORT ON 11.2.2011.

EXT.P4- THE TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE PLAINTIFF TO THE COMMISSION REPORT ON 10.6.2014.

EXT.P5- THE TRUE PHOTOCOPY OF THE NEW COMMISSION APPLICATION IA NO.1818/2015 IN OS NO.284/07 DATED 07.07.2015.

EXT.P6- THE TRUE PHOTOCOPY OF THE PETITION IA NO.1841/2015 IN OS 247/2007 WITH AFFIDAVIT DATED 8.7.2015.

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

O.P.(C)NO.1728 of 2015

Dated this the 26th day of October, 2015

J U D G M E N T

Defendants are the petitioners. The suit was tried and adjourned for judgment 08.07.2015. On 04.07.2015 the learned Munsiff suo motu set aside the commission report, and the plan attached to it and directed that the plaintiff may file a fresh commission application he is so advised. Mainly this order is challenged in this O.P.

2. Heard the learned counsel for the petitioners.

3. A copy of the proceedings sheet was called for.

I have perused the proceedings sheet. The case was posted for judgment to 08.07.2015. Without giving any notice to any of the parties the learned Munsiff advanced the posting of the case to 04.07.2015 and passed the following order:-

"On going through the case file I strongly feel that the commission report and plan marked in this case is not good for deciding the present suit. The plaintiff already filed a petition. I.A.1926/14 on 27.06.2014 to set aside the report and plan. The commission report and plan are set aside. The plaintiff if he want, can file a fresh Commission Application for ascertaining the necessary facts with the help of surveyor. Since the present case

is a very old one, he shall file such application if any within 3 days. Call on 8.7.15".

4. It was not proper for the learned Munsiff to take up the case on 04.07.2015 without issuing notice to any of the parties and to pass the order. It is seen from the impugned order that it is the 'feeling' of the learned Munsiff that the commission report will not help the court to take a proper decision that is the basis for passing the impugned order. In fact, he has not mentioned the reasons for setting aside the commission report and the plan. He should have passed a speaking order. A report and the plan cannot be set aside at his sweet will. The impugned order is liable to be set aside.

In the result, this O.P is allowed. The order passed by the learned Munsiff on 04.07.2015 setting aside the report and the plan is set aside. The learned Munsiff is directed to pass a speaking order after hearing both sides.

sd/-

**K. ABRAHAM MATHEW
JUDGE**

R.AV

//True Copy//

PA to Judge