

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

OP(C).No. 1800 of 2015 (O)

IA.3564/2015 IN OS.NO.732/2014 OF PRINCIPAL MUNSIFF'S COURT, ERNAKULAM.

PETITIONER/FIRST DEFENDANT:

**VARKEY, S/O.LATE LONAN, AGED 72 YEARS,
RESIDING AT MALIYAM VEETIL HOUSE,
KADAVANTHRA DESOM, ERNAKULAM.**

BY ADV. SRI.M.R.JAYAPRASAD

RESPONDENT/PLAINTIFF:

**M.C.JOHN,
S/O.LATE. LONAN PAPPACHAN, AGED 61 YEARS,
RESIDING AT MALIYAM VEETIL HOUSE,
KADAVANTHRA DESOM, ERNAKULAM.**

**BY ADVS. SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.N.MANMADAN
SRI.M.S.IMTHIYAZ AHAMMED
SMT.P.SEENA**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 15-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 1800 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1- TRUE COPY OF THE PLAINT IN OS NO.732/14 ON THE FILE OF THE HON'BLE PRINCIPAL MUNSIF'S COURT, ERNAKULAM.
- P2- TRUE COPY OF THE COMMISSION REPORT IN OS NO.747/2005 BEFORE THE MUNSIF'S COURT, ERNAKULAM.
- P3- TRUE COPY OF THE APPEAL MEMORANDUM IN R.S.A. NO.363/10 ON THE FILE OF THIS HON'BLE COURT.
- P4- TRUE COPY OF THE F.I.R IN CRIME NO.1715/2014 OF ERNAKULAM TOWN SOUTH POLICE.
- P5- TRUE COPY OF THE COMPLAINT DATED 10.6.14 FILED BY THE RESPONDENT BEFORE THE CORPORATION OF COCHIN.
- P6- TRUE COPY OF THE INTIMATION DATED 5.8.14 BY CORPORATION AUTHORITIES TO THE RESPONDENT.
- P7- TRUE COPY OF THE COMMISSION APPLICATION FILED BY THE PETITIONER IN IA NO.3564/2015 IN OS. NO.732/14.
- P8- TRUE COPY FO THE OBJECTION FILED BY THE PETITIONER DATED 1.6.2015 TO EXHIBIT P7.
- P9- TRUE COPY OF THE ORDER IN IA 3564/2015 IN OS 732/14 DATED 1.6.2015 RECEIVED FROM THE COURT ON 8.7.2015 OF THE HONOURABLE PRINCIPAL MUNSIF'S COURT, ERNAKULAM.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

P.B.SURESH KUMAR, J.

O.P.(C) No.1800 of 2015

Dated 15th October, 2015.

J U D G M E N T

Heard the learned counsel for the petitioner as also the learned counsel for the respondent.

2. Ext.P9 order, by which an application for appointment of an Advocate Commissioner was allowed by the court below, is under challenge in this original petition.

3. The suit is one for fixation of boundaries. In the suit, the plaintiff filed I.A.No.3564 of 2015 seeking orders to appoint an Advocate Commissioner to measure the properties of the parties with the aid of a competent surveyor and to fix the boundaries of the properties. The petitioner, who is the defendant in the suit objected the application on the ground that there was an earlier suit between the same parties in which the court has appointed an Advocate Commissioner for

the very same purpose and the Advocate Commissioner appointed in the said suit filed reports stating that there are well defined boundaries in between the properties of the parties. It is also pointed out by the learned counsel for the petitioner that though the earlier suit was dismissed by the trial court, the decision was partly reversed by the appellate court and the matter is now pending before this Court in RSA No.363 of 2010. The learned counsel for the respondent submitted that the subject matter of this suit and the earlier suit are not one and the same.

4. As indicated above, the present suit is one for fixation of boundaries of the properties of the parties. In a suit of this nature, it is obligatory for the plaintiff to take out a Commission to fix the boundaries. If, as a matter of fact, there was an earlier suit in respect of the same subject matter, an application for appointment of an Advocate Commissioner to fix the boundaries of the properties cannot be opposed on that ground. In the said circumstances, the court below cannot be faulted for having allowed the application for appointment of an

Advocate Commissioner. There is, therefore, no merit in the original petition and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)