

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

OP(C).No. 1860 of 2015 (O)

**I.A.NO.654 OF 2015 IN O.S.NO.317 OF 2012 OF THE MUNSIF'S COURT,
PERUMBAVOOR**

PETITIONER(S) :

1. KALADEVI @ KALA, AGED 48 YEARS,
D/O.PADMAVATHYAMMA, KORANKUDY PARAMBIL,
RESIDING AT MURINGASSERY VEETIL, KUTTIKKATTU,
THEKKE VAZHAKULAM KARA, VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK.
2. LATHA DEVI @ LATHA, AGED 46 YEARS,
D/O.PADMAVATHYAMMA, KORANKUDY PARAMBIL,
RESIDING AT MURINGASSERY VEETIL, KUTTIKKATTU,
THEKKE VAZHAKULAM KARA, VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK.
3. SINDHU, AGED 43 YEARS,
D/O.PADMAVATHYAMMA, KORANKUDY PARAMBIL,
RESIDING AT MURINGASSERY VEETIL, KUTTIKKATTU,
THEKKE VAZHAKULAM KARA, VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK.
4. PREETHI, AGED 40 YEARS,
D/O.PADMAVATHYAMMA, KORANKUDY PARAMBIL
RESIDING AT MURINGASSERY VEETIL, KUTTIKKATTU,
THEKKE VAZHAKULAM KARA, VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK.

**BY ADVS.SRI.G.RAJAGOPAL
SMT.S.LEELALAKSHMI
SMT.N.RENJINEE DEVI**

RESPONDENT(S) :

1. NAVEEN VENUGOPAL, AGED ABOUT 40 YEARS,
S/O.VENUGOPALAN NAIR, MURINGASSERY VEETIL,
THEKKE VAZHAKKULAM KARA,VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK, SOUTH VAZHAKKULAM POST, PIN: 683 105.

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- 2. SMITHA, AGED ABOUT 35 YEARS,
S/O.VENUGOPALAN NAIR, MURINGASSERY VEETIL,
THEKKE VAZHAKKULAM KARA, VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK, SOUTH VAZHAKKULAM POST, PIN: 683 105.**
- 3. SUMATHIAMMA, AGED 63 YEARS,
W/O.VENUGOPALAN NAIR, MURINGASSERY VEETIL,
THEKKE VAZHAKKULAM KARA, VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK, SOUTH VAZHAKKULAM POST, PIN: 683 105.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 31-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1: TRUE PHOTOCOPY OF THE PLAINT IN O.S NO.317 OF 2012 ON THE FILES OF THE MUNSIFF'S COURT, PERUMBAVOOR**
- P2: TRUE PHOTOCOPY OF THE WRITTEN STATEMENT WITH COUNTER CLAIM FILED BY THE DEFENDANTS IN O.S NO.317 OF 2012 ON THE FILES OF THE MUNSIFF'S COURT, PERUMBAVOOR.**
- P3: TRUE PHOTOCOPY OF COMMISSION REPORT DATED ALONG WITH SKETCH FILED BY THE ADVOCATE COMMISSIONER PURSUANT TO THE ORDER IN I.A NO.613 OF 2014 IN O.S.NO.317 OF 2012 ON THE FILES OF THE MUNSIFF'S COURT, PERUMBAVOOR.**
- P4: TRUE PHOTOCOPY OF THE OBJECTIONS DATED 13/03/2015 FILED BY THE PLAINTIFFS TO EXT.P3.**
- P5: TRUE PHOTOCOPY OF I.A NO.654 OF 2015 IN O.S.NO.317 OF 2012 ON THE FILES OF THE MUNSIFF'S COURT, PERUMBAVOOR.**
- P6: TRUE PHOTOCOPY OF THE OBJECTIONS FILED BY THE RESPONDENTS IN I.A NO.654 OF 2015 IN O.S NO.317 OF 2012 ON THE FILES OF THE MUNSIFF'S COURT, PERUMBAVOOR.**
- P7: TRUE PHOTOCOPY OF THE ORDER DATED 08/07/2015 IN I.A NO.654 OF 2015 IN O.S NO.317 OF 2012 ON THE FILES OF THE MUNSIFF'S COURT, PERUMBAVOOR.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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O.P.(C).No.1860 of 2015

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Dated this the 31st day of July, 2015

J U D G M E N T

Once the Commissioner's report was remitted and again it was executed with the aid of a Surveyor. Again, the plaintiffs, who are the petitioners herein, are not satisfied with the Commission's report as well as the plan. According to the petitioners, the measurements are not correctly made and the measurements are not shown. Even though Exhibit P5 I.A.No.654 of 2015 was filed by the petitioners for once again getting the Commissioner's report and plan remitted, the court below has dismissed the I.A. through Exhibit P7 order. It seems that the court below has not given an opportunity to the petitioners to prove as to what are the defect in the Commissioner's report and plan. It was without giving an opportunity to them, Exhibit P7 order was passed.

2. On going through Exhibit P7 and on hearing the learned counsel for the petitioners, this Court is of the view that Exhibit P5 I.A. requires reconsideration, for which, Exhibit P7 has to be set aside.

In the result, this Original Petition (Civil) is allowed. Exhibit P7 is set aside. The matter is remitted to the court below for fresh disposal in accordance with law. The court below shall give an opportunity to the petitioners to examine the Commissioner and the Surveyor, and then pass appropriate orders in accordance with law.

Sd/-

B.KEMAL PASHA
JUDGE