

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

OP(C).No. 1995 of 2015 (O)

ORDER IN IA.1463/2013 IN OS NO.262/2001 OF MUNSIF'S COURT, VARKALA
JUDGMENT IN RSA.1175/2011 OF HIGH COURT OF KERALA

PETITIONER(S):

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1. GIRIJA , AGED 63 YEARS
W/O.KARTHIKEYAN, KRISHNA BHAVAN, PUTHENCHANTHA
VETTOOR VILLAGE, VARKALA, THIRUVANANTHAPURAM DISTRICT.
 2. BINDU, AGED 43 YEARS
D/O.GIRIJA, KRISHNA BHAVAN, PUTHENCHANTHA
VETTOOR VILLAGE, VARKALA, THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.M.R.RAJESH
SMT.E.S.SANDHYA

RESPONDENT(S):

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1. SURENDRAN, AGED 85 YEARS
S/O.KUNJU, VALSALA BHAVAN, MYTHANAM
VARKALA FORM ELAMBANAZHIKATHU VEEDU
CHILAKKOOR DESOM, VARKALA VILLAGE 695 141.
 2. BINU
S/O.GIRIJA, KRISHNA BHAVAN, PUTHENCHANTHA
VETTOOR VILLAGE, VARKALA
THIRUVANANTHAPURAM DISTRICT. 695 141.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 13-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 1995 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE JUDGMENT DATED 21.11.11 IN RSA 1175/11 BEFORE THIS HONOURABLE COURT.

EXHIBIT P2. COPY OF THE IA 1463/13 IN OS 262/01 ON THE FILE OF MUNSIFFS COURT, VARKALA.

EXHIBIT P3. COPY OF THE ORDER DATED 23.6.15 IN IA 1463/13 IN OS 262/01 ON THE FILE OF MUNSIFFS COURT, VARKALA.

RESPONDENT(S)' EXHIBITS : NIL

// True Copy //

PA to Judge

B. KEMAL PASHA, J.

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O.P.(C) No.1995 of 2015
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Dated this the 13th day of August, 2015

J U D G M E N T

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Heard learned counsel for the petitioners.

2. Ext.P3 order passed by the court below whereby IA No.1463/2013 in OS No.262/2001 has been dismissed, is under challenge. Once the suit was decreed and the appeal preferred on it was also dismissed. The matter was taken to this Court through RSA. The RSA was allowed and the matter was remitted to the trial court. That is the reason for the delay that has been occasioned in the matter. The defendants have serious objections regarding the Commissioner's report as well as the plan and they filed IA No.1463/2013 for getting the Commissioner's report and plan set aside.

3. When the said IA came up for consideration before the court below, the court below has passed the

following order:-

“No proper representation for the petitioner. Since it is a very old case the petition is dismissed. The request of the petitioner can be considered at the time of trial if the court feels that such a prayer is entertainable.”

4. It seems that the court below has not adverted to any of the contentions resorted to by the defendants as against the Commissioner's report and plan. The court below has not addressed the defects pointed out by the defendants in the IA as against the Commissioner's report and plan. Ext.P3 order is not a speaking order. The court below ought to have adverted to the contentions of the rival sides to decide the question whether the Commissioner's report and plan have to be set aside or not. Matters being so, Ext.P3 order is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Ext.P3 order 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, if necessary, and shall hear both sides and pass appropriate orders in accordance with law, expeditiously.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/13/08

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PA to Judge