

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

OP(C).No. 2014 of 2015 (O)

**AGAINST THE ORDER IN OS 757/2013 of IIND ADDL.MUNSIFF'S COURT, ERNAKULAM
DATED 08.07.2015**

PETITIONER(S)/DEFENDANT :

**VARGHESE JACOB, AGED 53,
S/O.JACOB, MALAMEL HOUSE, KENNADYMUKKU,
VAZHAKKALA VILLAGE, EDAPPALLY, KANAYANNUR TALUK
ERNAKULAM**

**BY ADVS.SRI.C.P.SAJI
SMT.P.DEEPA MOHAN**

RESPONDENT(S)/PLAINTIFFS :

- 1. RAJA SETHUNATH, AGED 56,
S/O.GOVINDA PANICKER, SAROJAM HOUSE, KAKKANAD
VAZHAKKALA VILLAGE, KANAYANNUR TALUK, ERNAKULAM
PIN 682030.**
- 2. P SARAN KUMAR
S/O.RAJA SETHUNATH, SAROJAM HOUSE, KAKKANAD
VAZHAKKALA VILLAGE, KANAYANNUR TALUK, ERNAKULAM
PIN 682030**

**R1,R2 BY ADV. SRI.N.MANOJ KUMAR
R1,R2 BY ADV. SMT.JAYASREE MANOJ**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMV

OP(C).No. 2014 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1:- COPY OF THE PLAINT IN OS NO 757/2013 FILED BY THE RESPONDENTS/PLAINTIFFS BEFORE IIND ADDL MUNSIFFS COURT, ERNAKULAM DTD 26/7/2013.
- P2:- COPY OF THE WRITTEN STATEMENT DTD 26/11/2013 FILED BY THE DEFENDANT IN OS NO 757/2013 BEFORE IIND ADDITIONAL MUNSIFFS COURT, ERNAKULAM.
- P3:- COPY OF COMMISSION APPLICATION IA NO 1637/2014 FILED BY THE RESPONDENTS/PLAINTIFFS BEFORE IIND ADDITIONAL MUNSIFFS COURT, ERNAKULAM.
- P4:- COPY OF THE IA NO 8920/2014 FILED BY THE DEFENDANT IN OS NO 757/ 2013 BEFORE IIND ADDITIONAL MUNSIFF'S COURT, ERNAKULAM, DTD 17/11/2014.
- P5:- COPY OF COMMISSION REPORT FILED BY K G MARY, ADVOCATE COMMISSIONER IN IA NO 1637/14 IN OS NO 757/2013 BEFORE IIND ADDL MUNSIFF'S COURT , ERNAKULAM.
- P6:- COPY OF OBJECTION 9/2/2014 TO THE COMMISSION REPORT FILED BY THE DEFENDANTIN IA NO 1637/2014 IN OS NO 757/2013 BEFORE 2ND ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.
- P7:- COPY OF THE IA NO 1399/2015 FILED BY THE DEFENDANT IN OS NO 757/2013 BEFORE IIND ADDITIONAL MUNSIFF'S COUIRT, ERNAKULAM.
- P8:- COPY OF THE ORDER OF THE IIND ADDITIONAL MUNSIFFS COURT, ERNAKULAM, DTD 8/7/2015 IN IA NO 1399/2014 IN OS NO 757/2013.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2014 of 2015

Dated this the 7th day of December, 2015

J U D G M E N T

The petitioner is the defendant in OS.757 of 2013 of Additional Munsiff Court, Ernakulam in which the respondents are the plaintiffs. The suit is for a fixation of boundary and a perpetual injunction. A commissioner was deputed to measure the properties. He has filed Ext.P5 report. The petitioner filed IA 1399 of 2014 to set aside the report and to remit the report. That has been dismissed by Ext.P8 order. Its correctness is challenged.

2. Heard.

3. The first prayer in the plaint is to fix the boundary between the plaint A schedule property belonging to the respondents and plaint B schedule property belonging to the petitioner. The plaint shows that there is a "thodu" between the two parties. It is not stated whether it is natural or not. Both parties do not claim any right over it. So the learned Munsiff has to first decide

whether this 'thodu' is a boundary. If it is a boundary, there is no question of the court fixing the boundary again. It is unnecessary to take measurements of the property before the court comes to the conclusion that a boundary is in existence. All the reports so far filed are only to be ignored.

4. The second relief prayed for is a perpetual injunction prohibiting the petitioner from trespassing into the plaint A schedule property and widening the pathway in it. This is a matter to be proved by adducing oral evidence. It is not at all necessary to measure the property on the basis of title deed or survey plan so far as this relief is concerned. In these circumstances, I think the prayer of the petitioner to remit the report is unnecessary.

In the result, this OP is disposed of with a direction to the learned Munsiff to first determine whether a boundary exists between plaint A and B schedule properties. If he enters a finding that there is already a boundary, he shall not further proceed with the claim of fixation of boundary. If it is found that there is no boundary and fixation is necessary, a preliminary decree shall be passed so far as

fixation of the boundary is concerned and a final decree so far as the relief of perpetual injunction is concerned.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge