

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

OP(C).No. 2089 of 2015 (O)

**IA.2321/2010 IN OS.1324/2008 OF ADDITIONAL MUNSIFFS COURT,
IRINJALAKUDA, THRISSUR DISTRICT**

PETITIONER(S)/RESPONDENTS/DEFENDANTS 1 TO 5:

1. **GEORGE, AGED 69 YEARS,
S/O.THITILAPPILLY THOMMANA JOSEPH,
URAKAM DESOM, PULLUR VILLAGE, MUKUNDAPURAM TALUK.**
2. **BENNY, W/O.GEORGE, AGED 58 YEARS,
URAKAM DESOM, PULLUR VILLAGE, MUKUNDAPURAM TALUK.**
3. **BEJOHN, D/O.GEORGE, AGED 35 YEARS,
URAKAM DESOM, PULLUR VILLAGE, MUKUNDAPURAM TALUK.**
4. **GLADIS, D/O.GEORGE, AGED 32 YEARRS,
URAKAM DESOM, PULLUR VILLAGE, MUKUNDAPURAM TALUK.**
5. **GLORIYA, D/O.GEORGE, AGED 24 YEARS,
URAKAM DESOM, PULLUR VILLAGE, MUKUNDAPURAM TALUK.**
6. **FRANCIS, S/O.THOMMANA JOSEPH, AGED 77 YEARS,
URAKAM DESOM, PULLUR VILLAGE, MUKUNDAPURAM TALUK.**

**BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA
SRI.T.KABIL CHANDRAN
SRI.KRISHOB K.NAIR**

RESPONDENT(S)/PLAINTIFF:

**PINTO, S/O.CHITILAPILLY THOMMANA VARGHESE,
URAKAM DESOM, PULLUR VILLAGE, MUKUNDAPURAM TALUK,
PIN-691585, THRISSUR DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 27-10-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE PLAINT IN OS.1324/2008 OF THE ADDITIONAL MUNSIFFS COURT, IRINJALAKUDA
- P2: COPY OF THE WRITTEN STATEMENT IN OS.1324/08 OF THE ADDITIONAL MUNSIFFS COURT, IRINJALAKUDA
- P3: COPY OF THE COMMISSION REPORT ALONG WITH THE SKETCH IN IA.2637/08 IN OS.1324/08 ADDL.MUNSIFF COURT, IRINJALAKUDA
- P4: COPY OF THE ORDER IN IA.2321/10 IN OS.1324/08.

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K.ABRAHAM MATHEW J.

O.P.No.2089 of 2015

Dated this the 27th day of October, 2015

JUDGMENT

Petitioners are defendants 1 to 5 in O.S.No.1324 of 2008 on the file of Additional Munsiff, Irinjalakkuda. The suit is for fixation of boundary. The court appointed a commissioner to supervise the measurement of the properties by a surveyor on the basis of title deeds of the parties and survey plan. The report was filed. The petitioners filed I.A.No.2321 of 2010 to set aside the report. The court conducted an enquiry. By Ext P4 order the learned Munsiff dismissed the application. This is questioned in this Original Petition.

2. Heard the learned counsel on either side.

3. The deposition of the commissioner who was examined as PW2 was read over to me. It makes a very sorry reading. It appears that PW1 was not satisfied with the measurement of the properties. So the only course open to this court is to set aside the report. The impugned order is liable to be set aside. A fresh enquiry is necessary on the application.

In the result, Ext P4 is set aside. I.A.No.2321 of 2010 is remanded. The trial court shall conduct a fresh enquiry and come to an independent conclusion. If the parties want to adduce further evidence they shall be allowed to do so.

Sd/-

**K.ABRAHAM MATHEW
JUDGE**

cms

/True copy/

P.S.to Judge

The word "report" occurring in the 4th sentence in paragraph No.3 of the judgment dated 27.10.2015 in O.P.(C)No.2089/2015 is corrected and substituted as "impugned order", as per order dated 20.11.2015 in I.A.No.16417/2015 in OP(C) No.2089/2015.

Sd/-Registrar(Judicial)