

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

OP(C).No. 2130 of 2015 (O)

I.A NO. 455/2015 IN OS NO. 30/2013 OF SUB COURT, KARUNAGAPPALLY

PETITIONER :

**AJAYGHOSH @ AJAYKUMAR
S/O. GOPALAN, RESIDING AT MANALLOOR VEEDU
JNAKKINAL CHERRY, OACHIRA, KOLLAM.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S) :

- 1. K. KARTHIYAYANI
D/O. KUNJJI PENNU, RESIDING AT KALLELIL VEEDU
MADATHIKKARAYMA MURI, OACHIRA,
KOLLAM DISTRICT-691 028.**
- 2. SUBASH CHANDRAN,
T.C 11/1104, PATTOM P.O., KESAVADASAPURAM
THIRUVANANTHAPURAM, FROM KALLIL VEEDU
MADATHIKKARAYMA MURI, OACHIRA,
KOLLAM-691 028.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 04-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

OP(C).No. 2130 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT-P1- TRUE COPY OF THE PLAINT IN O.S 30/2013 FILED BEFORE THE SUB COURT, KARUNAGAPALLY DATED 25/07/2005.
- EXHIBIT-P2- TRUE COPY OF THE WRITTEN STATEMENT DATED 30/10/2006 IN O.S 30/2013 BEFORE THE SUB COURT, KARUNAGAPALLY.
- EXHIBIT-P3- TRUE COPY OF THE REPORT AND PLAN OF THE COMMISSIONER DATED 21/05/2008.
- EXHIBIT-P4- TRUE COPY OF THE CHIEF AFFIDAVIT DATED 06/01/2009.
- EXHIBIT-P5- TRUE COPY OF THE APPLICATION, I.A 455/2015 DATED 24/03/2015 IN O.S 30/2013 BEFORE THE SUB COURT, KARUNAGAPALLY.
- EXHIBIT-P6- TRUE COPY OF THE ORDER DATED 10/04/2015 IN I.A 455/2015 IN O.S 30/2013 BEFORE THE SUB COURT, KARUNAGAPALLY.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

O.P.(C) No.2130 of 2015

Dated this the 4th day of September, 2015

JUDGMENT

The petitioner is the first defendant in O.S.No.30/2013 on the file of the Sub Court, Karunagapally, has approached this Court challenging Ext.P6 order. Ext.P6 is an order arising from an application for appointing a Commission to measure the plaint schedule properties as well as the counter claim schedule properties.

2. It appears that the petitioner filed an application in the light of the counter claim raised by him in the suit. In fact, the court below dismissed the application on the ground that there is already a commission report and plan measuring out the plaint schedule properties and until and unless such report and plan are set aside, there is no need for the appointment of the commissioner. It is further observed by the court below that if the court finds in the final stage that the measurement of the counter claim schedule property is required to prove the counter claim, then the counter claim will not be dismissed on that ground.

This Court is of the view that since the court preserved the right, with liberty of the petitioner to have the measurement of the counter claim schedule properties at the final stage, the application ought not to have been dismissed. Therefore, this Court is of the view that the application filed by the petitioner shall be considered, if the trial is not commenced so far. If the trial is commenced, it shall be considered during trial.

The original petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

In