

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

OP(C).No. 2134 of 2015 (O)

**IA.737/2012 & IA.889/2015 IN OS.NO.589/2010 OF ADDITIONAL MUNSIF COURT,
ALAPPUZHA.**
.....

PETITIONER/PETITIONER/PLAINTIFF:

**REVALUTIONARY SOCIALIST PARTY,
ALAPPUZHA, REPRESENTED BY
THE DISTRICT COMMITTEE SECRETARY,
B.RAJASEKHARAN, AGED 56 YEARS,
S/O.BHASKARAN NAIR, ARATHI,
NANGAIYARKULANGARA MURI,
PALLIPPAD P.O.,KARTHIKAPPALLY,
ALAPPUZHA DISTRICT.**

BY ADV. SMT.S.L.SYLAJA

RESPONDENT(S)/COUNTER PETITIONERS/DEFENDANTS:

- 1. SWAPNA, AGED 37 YEARS, W/O.HARIKUMAR,
RESIDING AT KOCHUTHUNDIL HOUSE,
THEKKEKARA MURI, CHAMBAKKULAM VILLAGE,
KUTTANADU, ALAPPUZHA DISTRICT, PIN - 688 505.**
- 2. VAMANAN NAMBOOTHIRI, AGED 66 YEARS,
S/O.VISHNU NAMBOOTHIRI, KULANGARA ELLAM,
KOTTABHAGOM MURI, PULINCUNNU VILLAGE,
KUTTANADU, ALAPPUZHA DISTRICT, PIN -688 505.**

R1 BY ADV. SRI.R.AZAD BABU

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 2134 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P-1: TRUE COPY OF THE PLAINT SUBMITTED BY THE PETITIONER BEFORE THE ADDITIONAL MUNSIF COURT, ALAPPUZHA O.S.NO.589/2010.
- EXT.P-2: TRUE COPY OF THE I.A. NO.737/2012 FILED BEFORE THE ADDITIONAL MUNSIF COURT, ALAPPUZHA.
- EXT.P-3: TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT.
- EXT.P-4: TRUE COPY OF THE ORDER DATED 4.2.2015 IN I.A.NO.737/2012 OF THE ADDITIONAL MUNSIF COURT, ALAPPUZHA.
- EXT.P-5: TRUE COPY OF THE REVIEW PETITION FILED BEFORE THE ADDITIONAL MUNSIF COURT, ALAPPUZHA AS I.A. NO.889/2015 BY THE PETITIONER.
- EXT.P-6: TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT.
- EXT.P-7: TRUE COPY OF THE ORDER DATED 17.6.2015 IN I.A.NO.889/2015 OF THE ADDITIONAL MUNSIF COURT, ALAPPUZHA.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. ABRAHAM MATHEW, J.

O.P.(C) No.2134 of 2015

Dated this the 16th day of October, 2015

J U D G M E N T

Petitioner is the plaintiff in O.S.No.589 of 2010. The suit is for declaration of his title to the plaint schedule property. He filed Ext.P2 application to appoint a commissioner to measure the property on the basis of old survey plan. It was dismissed for default. The restoration application was dismissed by Ext.P7 order. The prayer is to set aside the order.

2. Heard.

3. Old survey plan was not available. So the petitioner filed Ext.P5 application to measure the property on the basis of re-survey plan. That also has been dismissed along with the application for restoration of the commission application. If old survey plan is not available, the petitioner cannot be found fault with. At the same time, measurement of the property is necessary to determine the dispute; but there have been latches on the part of the petitioner.

In the result, this O.P. is allowed. Ext.P7 order is set

aside. If the petitioner does not take steps within one month from today to take out the commission no further time shall be granted for that purpose and the court shall proceed with the trial of the suit.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge
