

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

OP(C).No. 2274 of 2015 (O)

**IA.7796/11 IN OS.358/2007 OF ADDITIONAL MUNSIFF'S COURT,
THIRUVANANTHAPURAM**

PETITIONER(S):

1. VIJAYAKUMARI, AGED 39 YEARS,
D/O.APPU NADAR, PARAVILAKATHUKEEZHE PUTHEN VEEDU,
THIRUMALA, THIRUVANANTHAPURAM A MENTALLY RETARDED
BY NEXT FRIEND AND FATHER, APPU NADAR, AGED 73,
PARAVILAKATHUKEEZHE PUTHEN VEEDU, THIRUMALA,
THIRUVANANTHAPURAM.
2. VIJAYAKUMAR, AGED 42 YEARS,
S/O.APPU NADAR, PARAVILAKATHUKEEZHE PUTHEN VEEDU,
THIRUMALA, THIRUVANANTHAPURAM.

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT(S):

1. LEELA, AGED 50 YEARS,
W/O.LATE PRABHAKARAN, PARAVILAKATHU VEEDU, PEROORKONAM
THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.
2. OMANA, AGED 48 YEARS,
D/O.JANAKI, PARAVILAKATHU VEEDU, PEROORKONAM,
THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.
3. JOSE, AGED 30 YEARS,
S/O.SWARNNAMMA, VADAKKEKARACKAL PUTHENVEEDU,
PAMAVARATHALACKAL SOCIETY ROAD, PEROORKONAM,
ARAMADA PO, THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.
4. SWARNNAMMA, AGED 60 YEARS,
VADAKKEKARACKAL PUTHENVEEDU,
PAMAVARATHALACKAL SOCIETY ROAD, PEROORKONAM,
ARAMADA PO, THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.

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OP(C).No. 2274 of 2015 (O)

5. SANTHOSH, AGED 30 YEARS,
VADAKKEKARACKAL PUTHENVEEDU,
PAMAVARATHALACKAL SOCIETY ROAD, PEROORKONAM,
ARAMADA PO, THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.
6. NELSON, AGED 54 YEARS,
S/O.APPUKUNJU NADAR, VADAKKEKARACKAL PUTHENVEEDU,
PAMAVARATHALACKAL SOCIETY ROAD, PEROORKONAM,
ARAMADA PO, THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.
7. SARASU, AGED 45 YEARS,
VADAKKEKARACKAL PUTHENVEEDU,
PAMAVARATHALACKAL SOCIETY ROAD, PEROORKONAM,
ARAMADA PO, THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.
8. SREEDHARAN, AGED 54 YEARS,
S/O.KUTTAN, VADAKKEKARACKAL PUTHENVEEDU,
PAMAVARATHALACKAL SOCIETY ROAD, PEROORKONAM,
ARAMADA PO, THRIKKANNAPURAM, THIRUVANANTHAPURAM 695032.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP(C).No. 2274 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: COPY OF THE PLAINT IN OS.NO.358/2007 OF MUNSIFF'S COURT,
THIRUVANANTHAPURAM**
- P2: COPY OF THE COMMISSION APPLICATION IN OS.NO.358/2007 OF MUNISFF'S
COURT, THIRUVANANTHAPURAM**
- P3: COPY OF THE COMMISSION REPORT IS.OS.NO.358/2007 OF MUNSIFF'S
COURT, THIRUVANANTHAPURAM**
- P4: COPY OF THE OBJECTION IN COMMISSION REPORT**
- P5: COPY OF THE ORDER IN IA.7796/2011 IN OS.NO.358/2007 OF ADDITONAL
MUNSIFF'S COURT, THIRUVANANTHAPURAM**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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K. ABRAHAM MATHEW, J.

O.P.(C). No. 2274 of 2015

Dated this the 5th day of October, 2015

J U D G M E N T

Petitioners are the plaintiffs in O.S.No.358 of 2007 on the file of Additional Munsiff, Thiruvananthapuram. The suit is for fixation of boundary and mandatory injunction. The commissioner deputed for measuring on the property has submitted a report along with a plan, which has been marked as Ext.P3. The petitioners filed an application to remit the report on the allegation that the commissioner has failed to mark the trespassed area. The learned Munsiff has dismissed it. Its correctness is challenged.

2. Heard the learned counsel.

3. A perusal of Ext.P1 shows that the Petitioners have a specific case that the respondents/defendants trespassed into the property and reduced a portion of it into their possession. Still there is no prayer for declaration of title or recovery of possession. In fact, it is admitted that at least to some extent there is a boundary wall, which means that the suit for fixation of boundary is

not the proper remedy. So I can not find fault with the learned Munsiff's dismissing the application to remit the commission report.

In the result, this O.P is dismissed.

The petitioners may take appropriate steps for proper remedy if they are so advised.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

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PA to Judge