

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW**

**FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937**

**OP(C).No. 2582 of 2015 (O)**  
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**OS.NO.378/2012 OF MUNSIFF'S COURT, PERUMBAVOOR**  
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**PETITIONER(S)/PLAINTIFF:**  
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**ANTONY LEO, AGED 70 YEARS,  
S/O.XAVIER, KUNUKKASSERY HOUSE, ALLAPADU CROSS ROAD,  
PERUMANOOR DESHAM, ERNAKULAM**

**BY ADVS.SRI.P.THOMAS GEEVERGHESE  
SRI.TONY THOMAS (INCHIPARAMBIL)**

**RESPONDENT(S)/DEFENDANT:**  
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- 1. BENJAMIN SAMUEL,  
S/O.CHERIYAN SAMUAL, PEEDIYEKKAL HOUSE,  
INDUSTRIAL NAGAR P.O., CHETHIPUZHA VILLAGE,  
CHENGANASSERY - 686 101.**
- 2. THOMAS ANTONY,  
S/O.THOMA, MULAKPADAM HOUSE, VEROOR,  
CHETHIPUZHA VILLAGE, CHENGANASSERY - 686 101.**

**BY ADVS. SRI.V.V.SIDHARTHAN (SR.)  
SRI.D.G.VIPIN  
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-11-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**msv/**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- P1: TRUE COPY OF PLAINT IN OS NO.378/2012 ON THE FILES OF MUNSIFF'S COURT, PERUMBAVOOR.
- P2: TRUE COPY OF COMMISSION REPORT AND PLAN IN IA 1364/2013 DATED 7/3/2015 OF MUNSIFF COURT, PERUMBAVOOR.
- P3: TRUE COPY OF AFFIDAVIT AND PETITION FILED IN IA NO.1892/2015 IN OS NO.378/2012 OF MUNSIFF'S COURT, PERUMBAVOOR.
- P4: TRUE COPY OF DEPOSITION OF PW2 (SURVEYOR) IN OS 378/2012 BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR.
- P5: TRUE COPY OF AFFIDAVIT AND PETITION FILED IN IA NO.2014/2015 IN OS 378/2012 BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR.
- P6: TRUE COPY OF CROSS-EXAMINATION OF DEPOSITION OF DW1 IN OS 378/2012 BEFORE THE MUNSIFF'S COURT, PERUMBAVOOR.
- P7: TRUE COPY OF COMBINED SKETCH OF RESURVEY NO.297 AND 299 OF PUTHENCROUZ VILLAGE.
- P8: TRUE COPY OF AFFIDAVIT AND PETITION FILED BY THE PETITIONER IN IA.NO.2019/2015 IN OS.NO.378/2012 OF MUNSIFF'S COURT, PERUMBAVOOR.

**RESPONDENT(S)' EXHIBITS:**  
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- EXT.R1(a): A TRUE COPY OF THE POSSESSION CERTIFICATE-CUM - LOCATION SKETCH NO.2566/10/10 DTD.15.9.2010 ISSUED BY THE VILLAGE OFFICER, PUTHENKURUSHU.
- EXT.R1(b): TRUE COPY OF THE PLAINT IN OS.NO.96/2012 BEFORE THE SUB COURT, PERUMBAVOOR.
- EXT.R1(c): TRUE COPY OF THE AFFIDAVIT AND PETITION DTD.12.11.2012 IN OS.96/2912 OF SUB COURT, PERUMBAVOOR.
- EXT.R1(d): TRUE COPY OF THE IA.1814/15 IN OS.NO.378/2012 OF MUNSIFF'S COURT, PERUMBAVOOR.
- EXT.R1(e): TRUE COPY OF THE IA.1824/15 IN OS.NO.378/2012 OF MUNSIFF'S COURT, PERUMBAVOOR.
- EXT.R1(f): TRUE COPY OF THE IA.1822/15 IN OS.NO.378/2012 OF MUNSIFF'S COURT, PERUMBAVOOR.

Msv/

OP(C).No. 2582 of 2015 (O)  
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EXT.R1(g): TRUE COPY OF THE IA.1823/15 IN OS.NO.378/2012 OF MUNSIFF'S COURT,  
PERUMBAVOOR.

EXT.R1(h): TRUE COPY OF OBJECTION TO COMMISSION REPORT DTD.29.9.2015.

EXT.R1(i): TRUE COPY OF THE DEPOSITION OF THE PW-1.

EXT.R1(j): TRUE COPY OF THE DEPOSITION OF THE COMMISSIONER (PW-3).

EXT.R1(k): A TRUE COPY OF IA.2019/2015 IN OS.378/12 OF MUNSIFF'S COURT,  
PERUMBAVOOR.

//TRUE COPY//

P.S.TO JUDGE

MsV/

**K. ABRAHAM MATHEW, J.**

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**O.P.(C)No.2582 of 2015**  
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**Dated this the 20<sup>th</sup> day of November, 2015**

**J U D G M E N T**

Petitioner is the plaintiff in OS.378 of 2012 on the file of Munsiff, Perumbavoor. It is filed for declaration of title to and recovery of possession of plaint B schedule property and for consequential reliefs. A commissioner was appointed to measure the property. The commissioner filed his report along with the plan prepared by the surveyor. The complaint is that the learned Munsiff has failed to consider Exts P3 and P5 applications filed by the petitioner to remit the commission report. The prayer is to direct the learned Munsiff to consider those applications before the suit is taken up for final hearing.

2. Heard.

3. The learned senior counsel appearing for the respondent submits that the petitioner has committed fraud upon the trial court, which is clear from the chronology of events in the suit.

4. On the commissioner filing the report and the plan, on 7.3.2015 the Munsiff posted the case for

objection to the commission report to 31.3.2015. But no objection was filed. The learned Munsiff again posted the case for further steps and adjourned the case to 26.5.2015, on which day also none of the parties filed objection. So the court directed posting of the case for trial to 3.10.2015. Just five days before the case was taken up for trial, the petitioner filed an objection to the commission report and IA.1822 of 2015 to remit the report and plan. He also filed IA.1823 of 2015 to amend the plaint and IA.1824 of 2015 to summon the commissioner and the surveyor for examination. On 1.10.2015 he filed IA.1814 of 2015 to adjourn the trial of the case. The learned Munsiff granted his prayer and postponed the trial to 9.10.2015. All the applications were posted for objection. On 7.10.2015 the respondents filed objection to IA.1822 of 2015 and 1823 of 2015. On 9.10.2015 the learned Munsiff dismissed the application to remit the report, and the application to amend the plaint which was not pressed. IAs 1822 of 2015 and 1823 of 2015 were dismissed as withdrawn. The plaintiff was examined as a witness on 9.10.2015 itself. On the very

same day the petitioner filed Ext.P3 second application to remit the commission report. He did not disclose that it was the very same relief he had claimed in the earlier application which was already dismissed on the very same day. The defendants filed objection to Ext.P3 application. On 16.10.2015 the trial of the case was adjourned to 21.10.2015 as it was submitted that the witnesses could not appear due to ill health. On 21.10.2015 the commissioner and the surveyor were examined and the plaintiff's evidence was closed. The case was posted to 26.10.2015 for the evidence of the defendants. On that day witnesses of the defendants were examined and the suit was posted for final hearing to 29.10.2015. On 26.10.2015 itself the petitioner filed the third application, Ext.P5 IA.2614 of 2015, to remit the commission report. He raised an allegation that the surveyor was corrupt. In the application there was no mention about the dismissal the earlier application, IA.1822 of 2015, and the pendency of Ext.P3 IA 1892 of 2015. The very next day he filed IA 2019 of 2015 to set aside the report again alleging corruption on the part of the surveyor. On the very same

day he filed this OP before this Court.

5. The facts mentioned above leave no room for doubt that the applications in respect of which this OP has been filed were nothing but abuse of the process of court. The petitioner wanted to stall the proceedings in the trial court somehow or other. He got a stay of the disposal of the case in this OP. The court cannot approve of his conduct. The learned Munsiff had given him more than sufficient opportunity to file objection to the report or application to set aside the report. The petitioner did not avail himself of those opportunities.

6. The learned counsel for the petitioner relies on the decision of a Division Bench of this Court in ***Kanaran Nair vs. Madhavan Nair (1996 (1) KLT 162*** in support of his argument that the court can consider commission application at any stage of the suit. There is no quarrel about it. Here is a case in which the petitioner was given about three months to file objection to the commission report or application to set aside the report. It is true that the if the court is dissatisfied with the report, at any stage of the suit suo motu it can set it aside. But that principle

is not applicable here. I find no reason to allow this OP. As this OP is an abuse of the process of the court he is liable to pay heavy costs to the respondents.

In the result, this OP is dismissed with Rs.10,000/- (Rupees ten thousand only) as costs to the respondents.

sd/-  
**K. ABRAHAM MATHEW**  
**JUDGE**

R.AV

//True Copy//

PA to Judge