

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

OP(C).No. 2658 of 2015 (O)

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AGAINST THE ORDER/JUDGMENT IN OS 48/2009 of MUNSIF COURT, CHITTUR
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PETITIONER(S)/RESPONDENTS IN IA/DEFENDANTS IN OS:

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- 1. KI.V.PRADEESH AGED 55 YEARS
S/O.K.V.VASU, KOOTHUMADOM HOUSE, VALLANGI VILLAGE
CHITTUR TALUK, NENMARA P.O., PALAKKAD DISTRICT 678 508**
 - 2. K.V.VINESH KUMAR
S/O.K.V.VASU, KOOTHUMADOM HOUSE, VALLANGI VILLAGE
CHITTUR TALUK, NENMARA P.O.
PALAKKAD DISTRICT 678 508.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)**

RESPONDENT(S)/APPLICANT IN I.A/PLAINTIFF IN OS::

**K.V.RAJASEKHARAN
S/O.VASU, KOOTHUMADOM HOUSE, VALLANGI VILLAGE
CHITTUR TALUK, NANMARA P.O.
PALAKKAD DISTRICT 678 508.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 06-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: DATED 21/1/2009 A TRUE COPY OF PLAINT IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR.

EXT.P2: DATED 26/8/2009- A TRUE COPY OF WRITTEN STATEMENT FILED ON BEHALF OF R1 AND R3 IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR

EXT.P3: DATED 13/10/2009 - A TRUE COPY OF THE STATEMENT FILED BY R2 ADOPTING THE WRITTEN STATEMENT FILED ON BEHALF OF R1 AND R3 FOR HIM ALSO.

EXT.P4: DATED 6/3/2009- A TRUE COPY OF THE 1ST COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR.

EXT.P5: DATED 16/2/2015 - A TRUE COPY OF THE COMMISSION REPORT AND 2 SKETCHES FILED BY THE ADVOCATE COMMISSIONER IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR.

EXT.P6: DATED 25/6/2015 - A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS HEREIN TO THE EXT.P5 COMMISSION REPORT IN IN OS NO.48/2009 BEFORE THE MUNSIFF COURT, CHITTUR.

EXT.P7: DATED 6/7/2015 - A TRUE COPY OF THE IA NO.1364/2015 IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR.

EXT.P8: DATED 6/10/2015 - A TRUE COPY OF THE IA NO.2135/2015 IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR.

EXT.P9: DATED 8/10/2015 - A TRUE COPY OF THE OBJECTION TO IA NO.2135/2015 IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR.

EXT.P10: DATED 14/10/2015 - A TRUE COPY OF THE ORDDER IN IA NO.2135/2015 IN OS NO.48/2009 ON THE FILE OF THE MUNSIFF COURT, CHITTUR

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//True Copy//

PA to Judge

K.ABRAHAM MATHEW, J

O.P.(C).NO.2658 OF 2015

Dated this the 6th day of November, 2015

J U D G M E N T

Petitioners are the defendants in OS.48 of 2009 on the file of Munsiff, Chittur. A commission report was filed in the case. The respondent/plaintiff filed an application to set aside the report. The learned Munsiff posted the case for trial. After the surveyor was examined in the course of the trial, the learned Munsiff entertained an application filed by the respondent to postpone his examination till IA.1364 of 2015 filed by him to set aside the commission report is disposed of. That has been allowed by the learned Munsiff. This is challenged.

2. Heard.

3. It is seen from Ext.P10 order passed by the learned Munsiff that after the respondent filed an application to set aside the commission report he made a representation that the application may be considered

after the trial and for that reason the learned Munsiff took up the case for trial. It was not taking into consideration the said submission the present application was allowed. If such a representation was made the respondent took the risk of the court taking a decision against him on the application. He cannot now turn round and say that the trial should be stopped so that his application may be considered now. But the learned counsel for the respondent submits that the respondent did not make a representation that the application to set aside the commission report may be taken up after the trial. If that is true, the proper remedy for him is to file an application before the learned Munsiff concerned to review the order in which the above said observation is made. So it is only proper that this O.P is allowed.

In the result, this O.P is allowed. The impugned order is set aside. The respondent may file an application before the learned Munsiff to remove the observation in Ext.P10 that he represented that the application to set aside the commission report might be taken up after the trial. If that is allowed the learned Munsiff may consider

the application to set aside the commission report before the trial is completed. If that application is dismissed, the learned Munsiff shall proceed with the trial.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge