

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. 2682 of 2015 (O)

**(IN IA NO.2580/2006 IN OS.NO.84/2003 OF HON'BLE MUNSIFF COURT,
PATHANAMTHITTA)**

PETITIONER(S):

**K.JOHN @ ASHOK
MAMUTTIL ESTATE, OOTTUPARA, ARUVAPPULAM
VILLAGE, KONNI TALUK, PATHANAMTHITTA DIST.,
KERALA STATE NOW RESIDING AT 9B2 CONDOR DAFFODILS'
UPPER MERDIAN ROAD, TRIVANDRUM-695003.**

BY ADV. K.JOHN @ ASHOK (PARTY IN PERSON)

RESPONDENT(S):

- 1. SRI.JOSEPH GEORGE (DIED)
VADAKKEDATHU HOUSE, KALLELY.P.O.,
KONNI, PATHANAMTHITTA DIST.**
- 2. SRI.JOHN JOSEPH
VADAKKEDATHU HOUSE, KALLELY.P.O.,
KONNI, PATHANAMTHITTA DIST.**
- 3. MRS.MARIAMMA THOMAS
VADAKKEDATHU HOUSE, KALLELY.P.O.,
KONNI, PATHANAMTHITTA DIST.**
- 4. MEENU JOSEPH
VADAKKEDATHU HOUSE, KALLELY.P.O.,
KONNI, PATHANAMTHITTA DIST.**
- 5. SUMI MATHEW
VADAKKEDATHU HOUSE, KALLELY.P.O.,
KONNI, PATHANAMTHITTA DIST.**
- 6. SANA MATHEW
VADAKKEDATHU HOUSE, KALLELY.P.O.,
KONNI, PATHANAMTHITTA DIST.**
- 7. K.GEORGE
MAMUTTIL ESTATE, OOTTUPARA, ARUVAPPULAM
VILLAGE, KONNI TALUK, PATHANAMTHITTA DIST.,
KERALA STATE**
- 8. BINDU JOSEPH
VADAKKEDATHU HOUSE, KALLELY.P.O.,
KONNI, PATHANAMTHITTA DIST.**

**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:

EXHIBIT.P1-TRUE COPY OF THE PLAINT IN OS.NO.84/2003 DATED 17.2.2003.

EXHIBIT.P2-TRUE COPY OF REPORT AND SKETCH DATED 14.3.2003 OF ADV.HARIHARAN NAIR.

EXHIBIT.P3-TRUE COPY OF COMMISSION REPORT DATED 26.6.2003 OF ADV.SOMAN PILLAI

EXHIBIT.P4-TRUE COPY OF OBJECTION IN IA.NO.2580/2006 IN OS.84/2003 DATED 23.11.2006.

EXHIBIT.P5-TRUE COPY OF JUDGMENT IN OP(C)NO.2112/2015 OF HON'BLE HIGH COURT OF KERALA DATED 14.10.2015.

EXHIBIT.P6-TRUE COPY OF THE IA.NO.514/2007 IN OS.84/2003 DATED 23.02.2015.

EXHIBIT.P7-TRUE COPY OFG THE ORDER IN IA.NO.514/2007 DATED 13.02.2015.

EXHIBIT.P8-TRUE COPY OF THE SANCTION PETITION WITH WITNESSES SCHEDULE IN IA.NO.546/2015 DATED 18.3.2015.

EXHIBIT.P9-TRUE COPY OF THE ORDER IN IA.NO.546/2015 DATED 30.5.2015.

EXHIBIT.P10-TRUE COPY OF THE PLAINT IN OS.NO.93/2013 DATED 4.4.2013.

EXHIBIT.P11-TRUE COPY OF THE ADVOCATE COMMISISON REPORT OF ADV.NOBIN ALEX SAKARIA DATED 8.4.2013.

EXHIBIT.P12-TRUE COPY OF THE ADV.COMMISSION REPORT OF ADV.K.KALA DATED 12.3.2015.

EXHIBIT.P13-TRUE COPY OF THE CHIEF AFFIDAVIT IN IA.NO.514/2007 AND IA.NO.2580/2006 IN OS.NO.84/2003 DATED 7.4.2015.

EXHIBIT.P14-TRUE COPY OF THE MEDICAL CERTIFICATE DATED 28.5.2014.

RESPONDENT'S EXHIBITS: NIL

R.AV

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PA to Judge

K. ABRAHAM MATHEW, J.

O.P.(C)NO.2682 of 2015

Dated this the 6th day of November, 2015

J U D G M E N T

Petitioner is the second plaintiff in OS.84 of 2003 of Munsiff Court, Pathanamthitta. On his application one Advocate Sri.Soman Pillai was appointed as commissioner to measure the plaint schedule property with the assistance of surveyor one Basheer Khan. Sri.Soman Pillai got property measured and filed a report and plan. The petitioner has filed IA.2580 of 2006 to set aside the report. During the pendency of the said suit he filed OS.93 of 2013 in Sub Court, Pathanamthitta for some other purposes. In that case also one commissioner was deputed to measure the properties. Adv.Smt.Kala was appointed as commissioner. She with the assistance of surveyor Smt.Sali Bai conducted the measurements and filed a report along with a plan. The petitioner filed IA.2580 of 2006 in OS.84 of 2003 to set aside the commission report prepared by Adv.Sri.Soman Pillai, and he filed a witness schedule. There are six witnesses in the schedule. The court examined Adv.Sri.Soman Pillai as PW1 and surveyor

Sri.Basheer Khan as PW2. It appears that the court has refused to examine the remaining witnesses. In this O.P the petitioner prays that he may be allowed to examine the remaining witnesses also.

2. Heard the petitioner, who has appeared in person.

3. The petitioner cannot examine the advocate who was appointed as commissioner in the subsequent suit filed in Sub Court as a witness in this proceedings. The only two witnesses whose evidence may be recorded in the present proceedings are Advocate Sri.Soman Pillai and Surveyor Sri.Basheer Khan. They have already been examined. The evidence of the other witnesses is beyond the scope of the present proceedings as it is irrelevant. The petitioner cannot be allowed to examine the other witnesses.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

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PA to Judge