

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

OP(C).No. 1818 of 2014 (O)

AGAINST THE ORDER/JUDGMENT IN OS 334/2014 of MUNSIF COURT, HOSDRUG
DATED 01-03-2014

PETITIONER/PLAINTIFF

E.K. NARAYANAN AGED 58 YEARS
S/O.LATE KRISHNAN, ERIKKUMKALLU
PANATHADY VILLAGE, HOSDURG TALUK, P.O.PANATHADY
KASARAGOD DISTRICT

BY ADVS.SRI.T.K.VIPINDAS
SRI.K.V.SREEVINAYAKAN
SRI.K.M.MUHAMMED HUSSAIN

RESPONDENTS/DEFENDANT:

1. THOMAS, AGED 54 YEARS
S/O.JOSEPH, PUTHIYAPARAMBIL, ERIKKUMKALLU
PANATHADY VILLAGE, HOSDURG TALUK
P.O PANATHADY, KASARAGOD DISTRICT - 673 123.
2. TALUK SURVEYOR
HOSDURG TALUK, KASARAGOD DISTRICT 673 123

R-R1 BY ADV. SRI.PHILIP J.VETIKATTU
R-R1 BY ADV. SRI.B.PREMNATH (E)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 1818 of 2014 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 - THE TRUE COPY OF THE APPLICATION AS IA.113/2014 IN
OS.334/2011 ON THE FILE OF MUNSIFF COURT, HOSDURG.

EXT.P2 - THE TRUE COPY OF THE ORDER DATED 15-2-2014 AS I.A.416/2014
IN OS.334/2011 ON THE FILE OF MUNSIFF COURT, HOSDURG.

EXT.P3 - THE TRUE COPY OF THE ORDER IN IA.113/2014 IN OS.334/2011
DATED 1-3-2014 ON THE FILE OF MUNSIFF COURT, HOSDURG.

EXT.P4 - THE TRUE COPY OF THE RELEVANT ORDER OF THE KERALA SRUVEY
MANUAL AS CIRCULAR NO.B-15-31542/84 DATED 8-1-1985.

RESPONDENT(S) ' EXHIBITS - NIL

/TRUE COPY/

P.A.to Judge

SAS

B. KEMAL PASHA, J.

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O.P.(C) No.1818 of 2014
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Dated this the 23rd day of July, 2015

J U D G M E N T

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In the written statement filed in the suit, the defendants contended that the property of the plaintiff is not identifiable. Therefore, a survey was necessitated. A Commission application was filed. The Taluk Surveyor was deputed to assist the Advocate Commissioner. The Commissioner has filed a report along with a sketch prepared by the Taluk Surveyor. The Commissioner has reported that the field measurement book was not available and the survey stones were also not available. The measurements were allegedly carried with the aid of a plan produced by the defendants. The petitioner, who is the plaintiff, has challenged the validity of the said Commissioner's report and sketch and he wanted to get the Commissioner's report and plan remitted to the

commissioner to carry out the measurement in accordance with the field measurement book. Through Ext.P3, the court below has dismissed the said IA on the ground that the field measurement book became mutilated and it was not available and, therefore, the measurements are not available.

2. Heard learned counsel for the petitioner and learned counsel for the respondents.

3. The learned counsel for the petitioner has produced the copy of Ext.P4 circular dated 08.01.1985 issued by the Board of Revenue, Thiruvananthapuram. From Ext.P4, it can be seen that the duplicates of the field measurement books are available at the office of the Survey Superintendent as well as the Taluk Office. In such a context, the court below can either issue a court certificate to the petitioner for enabling him to procure the copy of such a plan from the Survey Superintendent's office or to call for the said document from the Survey Superintendent's office.

4. With the aforesaid observations, Ext.P3 order passed by the court below is set aside. The matter is remitted to the court below for fresh disposal in accordance with law. The court below shall either call upon the Survey Superintendent to produce the plan, or in the alternative, issue a court certificate to the petitioner enabling him to procure the said plan. Thereafter, the Commissioner has to be deputed once again by remitting the report and plan for executing the warrant.

O.P.(Civil) is disposed of as above.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/23/07

// True Copy //

PA to Judge