

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

OP(C).No.2579 of 2014 (O)

OS NO.65/2012 of MUNSIF COURT,KALPETTA.

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PETITIONER:

**CHOLAYIL SARASWATHY,AGED 51 YEARS,
W/O.SATHYAN,PONNAMKARA,POOTHADI,
VARADOOR P.O.,SULTAN BATHERY,WAYANADU.**

BY ADV.SRI.JESWIN P.VARGHESE

RESPONDENT:

**ERPALATHINGAL GOPI,AGED 59 YEARS,
S/O.VELAYUDHAN ERPALATHINGAL HOUSE,
KANIYAMPATTA P.O.,VYTHIRI,WAYANADU - 673 576.**

**R1 BY ADVS.SRI.MANOJ RAMASWAMY
SMT.SANJANA R.NAIR**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

OP(C).No.2579 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS:

- P1 - A TRUE COPY OF THE PLAINT IN OS NO.65/2012 ON THE FILES OF MUNSIFF'S COURT, KALPETTA.
- P2 - A TRUE COPY OF THE SKETCH SUBMITTED BY THE ADVOCATE COMMISSIONER AND ANNEXED TO THE FINAL DECREE IN OS NO.81/2004 DT. 11.11.2009.
- P3 - A TRUE COPY OF THE WRITTEN STATEMENT FILED IN OS NO.65/2012 DT. 03.1.2013.
- P4 - A TRUE COPY OF THE COMMISSIONER'S REPORT AND ROUGH SKETCH FILED IN OS NO.65/2012 DT. 15.3.2012.
- P5 - A TRUE COPY OF THE AFFIDAVIT SWORN BY THE PETITIONER AND ACCOMPANIED IA NO.596/2014 DT. 21.7.14.
- P6 - A TRUE COPY OF THE ORDER OF MUNSIFF'S COURT, KALPETTA IN IA NO.596/2014 IN OS NO.65/2012 DT. 19.9.14.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

B.KEMAL PASHA, J.

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O.P.(C). No.2579 of 2014

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Dated this the 18th day of June, 2015

J U D G M E N T

The suit is one for recovery of possession based on title. According to the plaintiff, she obtained the property through the Final Decree in O.S.No.81 of 2004. The plaint schedule property is shown in A2 plan, appended with the Final Decree. It seems that the court below has appointed a Commissioner. Even though the Commissioner has identified the property, the survey plan has not been prepared. For passing decree in such a suit, plan is required and the same should be appended with the decree. It seems that the court below has failed to take note of that aspect and has dismissed I.A.No.596 of 2014.

2. Heard the learned counsel for the petitioner and the

learned counsel for the respondent.

3. The Commissioner's report has necessarily to be remitted to the Commissioner. The Commissioner should again visit the property with the assistance of a Surveyor and identify the property, and measure out the property. A plan has to be prepared. Matters being so, Exhibit P6 order is liable to be set aside. The court below is directed to remit the Commissioner's report to the Commissioner and direct the Commissioner to visit the property with the assistance of a Surveyor in order to carryout measurement of the property and to obtain the Commissioner's report appended with the plan. The petitioner shall pay the necessary Bata.

With the said observations, this Original Petition (Civil) is allowed.

Sd/-
B.KEMAL PASHA
JUDGE