

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

OP(C).No. 2585 of 2014 (O)

**AGAINST ORDER IN I.A. NOS. 2066/2014 & I.A. NO. 1412/2013 IN O.S. NO. 90/2011 OF
MUNSIFF COURT, PUNALUR DATED 14.10.2014 AND 27.09.2013**

PETITIONER(S)/1ST DEFENDANT:

**KURIAN GEORGE, AGED 70 YEARS,
S/O.LATE T.K.GEORGE, MAVILA, AREEPLACHI P.O.
(VIA) PUNALUR, PIN 691333.**

BY ADV. KURIAN GEORGE (PARTY IN PERSON)

RESPONDENT(S)/PLAINTIFF/DEFENDANTS 2 AND 3:

- 1. ANNAMMA GEORGE, AGED 71 YEARS
W/O.LATE T.D.ALEXANDER, WINDSOR MANSION, 5C
KOWDIAR, THIRUVANANTHAPURAM, PIN 695003.**
- 2. JOSEPH GEORGE, AGED 62 YEARS
S/O.THANKAMMA GEORGE
RESIDING AT THEKKINKATTIL BANGLOW, AGASTIACODE, ANCHAL
PIN 691333.**
- 3. ANGELINA GEORGE
W/O.DR.JOY JOSEPH, RESIDING AT THEKKINKATTIL BANGLOW
AGASTIACODE, ANCHAL, PIN 691333.**

**R1 & R2 BY ADV. SRI.SATHISH NINAN
R2 BY ADV. SRI.SANTHOSH MATHEW
R2 BY ADV. SRI.ARUN THOMAS
R2 BY ADV. SRI.JENNIS STEPHEN**

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

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1:** COPY OF THE JUDGMENT DATED 09.04.2012 IN O.P.(CIVIL) NO.4159 OF 2011 OF THE HON'BLE HIGH COURT OF KERALA.
- EXHIBIT-P2:** COPY OF THE FIR FILED BY ANCHAL POLICE BEFORE THE JFCM COURT-I, PUNALUR.
- EXHIBIT-P3:** COPY OF SUMMONS OR NOTICE NUMBER NIL ISSUED BY THE SUB INSPECTOR OF POLICE, ANCHAL.
- EXHIBIT-P4:** COPY OF THE COMPLAINT DATED 08.08.2012 FILED BY R.SOMARAJAN.
- EXHIBIT-P5:** COPY OF THE ORDER OF THE HON'BLE SESSIONS COURT, KOLLAM IN CRL.M.P.NO.2175/2012.
- EXHIBIT-P6:** COPY OF THE ORDER OF THE MAHASAR PREPARED BY THE POLICE PURSUANT TO EXT.P2, FIR.
- EXHIBIT-P7:** COPY OF THE ADVOCATE COMMISSIONER'S REPORT DATED 04.10.2012 IN O.S.NO.90 OF 2011.
- EXHIBIT-P8:** COPY OF NOTICE BEARING NO.D1-21868/12 DATED 20.9.12 ISSUED BY THE TALUK SURVEYOR, PUNALUR.
- EXHIBIT-P9:** COPY OF THE OBJECTION DATED 27.9.2012 TO EXT.P8 NOTICE.
- EXHIBIT-P10:** COPY OF RE-SURVEY SKETCH PERTAINING TO SURVEY NUMBERS 60/1 (OLD SURVEY NO.271/1G1).
- EXHIBIT-P11:** COPY OF RE-SURVEY SKETCH BEARING RE.SY.NO.62.
- EXHIBIT-P12:** COPY OF THE APPEAL DATED 31.12.12 FILED BEFORE THE DISTRICT SUPERINTENDENT OF SURVEY AND LAND RECORDS, KOLLAM.
- EXHIBIT-P13:** COPY OF LETTER DATED 11.11.2013 ISSUED BY THE DISTRICT SURVEY SUPERINTENDENT, KOLLAM.
- EXHIBIT-P14:** COPY OF THE DETAILED REPLICATION DATED 20.11.2013 FILED BEFORE THE DISTRICT SURVEY SUPERINTENDENT, KOLLAM.
- EXHIBIT-P15:** COPY OF THE PETITION SUBMITTED BY SUSAN JOSEPH, WIFE OF 2ND RESPONDENT.
- EXHIBIT-P16:** COPY OF THE PETITION SUBMITTED BY THE 1ST RESPONDENT.
- EXHIBIT-P17:** COPY OF REPORT FORWARDED BY THE DISTRICT SURVEY SUPERINTENDENT TO THE DIRECTOR OF SURVEY AND LAND RECORDS, THIRUVANANTHAPURAM.

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- EXHIBIT-P18: COPY OF LETTER DATED 27.11.2013 OF THE DISTRICT SURVEY SUPERINTENDENT,KOLLAM.
- EXHIBIT-P19: COPY OF LETTER BEARING NO.SURVEY 2. 495/13 DATED 21.2.2014 ISSUED BY THE DEPUTY DIRECTOR OF SURVEY AND LAND RECORDS, KOLLAM.
- EXHIBIT-P20: COPY OF LETTER NO.SURVEY 2. 495/13 DATED 4.3.2014 ISSUED BY THE DEPUTY DIRECTOR OF SURVEY AND LAND RECORDS, KOLLAM.
- EXHIBIT-P21: COPY OF LAWYER/ADVOCATE NOTICE DATED 24.4.14.
- EXHIBIT-P22: COPY OF LETTER DATED 22.4.2014 ISSUED BY THE DEPUTY DIRECTOR OF SURVEY AND LAND RECORDS, KOLLAM.
- EXHIBIT-P23: COPY OF LETTER DATED 31.5.2014 ISSUED BY THE DEPUTY DIRECTOR OF SURVEY AND LAND RECORDS, KOLLAM.
- EXHIBIT-P24: COPY OF STATEMENT OF FACTS DATED 4.6.2013 FILED BEFORE THE POLICE COMPLAINTS AUTHORITY BY THE INSPECTOR OF POLICE, ANCHAL.
- EXHIBIT-P25: COPY OF THE REPORT DATED 7.5.2014 OF K.RAMACHANDRAN.
- EXHIBIT-P26: COPY OF SKETCH DATED 7.5.2014 FURNISHED BY K.RAMACHANDRAN.
- EXHIBIT-P27: COPY OF COMPLAINT DATED 15.5.2014 FILED BEFORE THE INSPECTOR OF POLICE, ANCHAL.
- EXHIBIT-P28: COPY OF THE PETITION DATED 15.5.2014 FILED BEFORE THE DISTRICT POLICE CHIEF, KOLLAM, (RURAL).
- EXHIBIT-P29: COPY OF THE PETITION I.A.NO.2066 OF 2014 FILED BEFORE THE MUNSIFF'S COURT, PUNALUR.
- EXHIBIT-P30: COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT AGAINST THE I.A.NO.2066 OF 2014 BEFORE THE MUNSIFF'S COURT, PUNALUR.
- EXHIBIT-P31: CERTIFIED COPY OF THE ORDER DATED 14TH OCTOBER, 2014 IN I.A.NO.2066 OF 2014.
- EXHIBIT-P32: COPY OF THE PETITION IN I.A.NO.1412 OF 2013 FILED BY THE 1ST RESPONDENT FOR CHANGING THE ADVOCATE COMMISSIONER.
- EXHIBIT-P33: COPY OF OBJECTION DATED 11.9.2013 FILED BY THE PETITIONER AGAINST CHANGING THE ADVOCATE COMMISSIONER.
- EXHIBIT-P34: COPY OF THE ORDER DATED 27.9.2013 IN I.A.NO.1412 OF 2013.
- EXHIBIT-P35: PHOTOGRAPHS (3 NOS).

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EXHIBIT-P36: TRUE COPY OF STATEMENT OF FACTS FILED BY THE INSPECTOR OF POLICE, ANCHAL BEFORE THIS HON'BLE HIGH COURT IN W.P.(C) NO. 19845 OF 2012 DATED 06.09.2012.

EXHIBIT-P37: TRUE PHOTOCOPY OF THE INLAND LETTER DATED 21.07.1979 OF DR. P.J. GEORGE ADDRESSED TO THE PETITIONER.

EXHIBIT-P38: TRUE PHOTOCOPY OF THE OBJECTION DATED 31.03.2015 IN O.S. NO. 329/2012 FILED BY THE PETITIONER.

EXHIBIT-P39: TRUE PHOTOCOPY OF THE ORDER DATED 11.04.2014 IN I.A. NO. 797/2014 IN O.S. NO. 162 OF 2014 OF THE MUNSIFF'S COURT, PUNALUR.

EXHIBIT-P40: TRUE PHOTOCOPY OF THE COMMISSION REPORT DATED 27.3.2014 IN I.A. NO. 795/2014 IN O.S. NO. 162/2014.

EXHIBIT-P41: TRUE PHOTOCOPY OF THE COMMISSION REPORT DATED 18.08.2014 IN I.A. NO. 1803/2014 IN O.S. NO.162/2014.

EXHIBIT-P42: TRUE PHOTOCOPY OF THE REPORT OF INVESTIGATION RECOMMENDING ACTION AGAINST POLICE OFFICIALS IN ANCHAL POLICE STATION.

RESPONDENT(S)' EXHIBITS:

EXHIBIT R1(a): COPY OF THE PARTITION DEED EXECUTED BETWEEN THE MOTHER OF THE PETITIONER AND RESPONDENTS.

EXHIBIT R1(b): COPY OF THE DOCUMENT NO. 2932 OF 1987 EXECUTED IN FAVOUR OF THE FIRST RESPONDENT BY HER MOTHER.

EXHIBIT R1(c): COPY OF THE TAX RECEIPT DATED 29.10.2009 SHOWING THE PAYMENT OF TAX IN RESPECT OF THE 3 ACRES OF LAND BY THE PETITIONER.

EXHIBIT R1(d): COPY OF THE PLAINT IN O.S. NO. 90 OF 2011.

EXHIBIT R1(e): COPY OF THE WRITTEN STATEMENT FILED IN O.S. NO. 90 OF 2011.

EXHIBIT R1(f): COPY OF THE ORDER DATED 12.04.2011 IN I.A. NO. 535/2011 AND I.A. NO. 702/2011 IN O.S. NO. 90/2011.

EXHIBIT R1(g): COPY OF THE COMMON JUDGMENT DATED 17.11.2011 IN CMA NOS. 21 AND 22 OF 2011.

EXHIBIT R1(h): COPY OF THE JUDGMENT IN OP (CVL.) NO. 4159 OF 2011.

EXHIBIT R1(i): COPY OF THE SURVEY PLAN PREPARED BY THE SURVEY AUTHORITY.

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- EXHIBIT R1(j): COPY OF THE RESURVEY PLAN RELATING TO THE PROPERTY AND SITUATED IN FIELD NO. 62.
- EXHIBIT R1(k): COPY OF THE RESURVEY PLAN RELATING TO THE PLAINT SCHEDULE PROPERTY.
- EXHIBIT R1(l): COPY OF THE JUDGMENT IN WP(C) NO. 19845 OF 2012.
- EXHIBIT R1(m): COPY OF THE PLAINT IN O.S. NO. 329 OF 2012.
- EXHIBIT R1(n): COPY OF THE COMMISSION REPORT IN O.S. NO. 329 OF 2012 SUBMITTED BY THE ADV. COMMISSIONER.
- EXHIBIT R1(o): COPY OF THE ORDER DATED 21.2.2014 IN I.A. NOS. 1656 OF 2013 AND I.A. NO. 1873 OF 2012 IN O.S.NO.329 OF 2012.
- EXHIBIT R1(p): COPY OF THE COMMISSIONER REPORT IN O.S. NO. 90 OF 2011 SUBMITTED BY ADV. COMMISSIONER.
- EXHIBIT R1(q): COPY OF THE I.A. NO. 1912 OF 2012 IN O.S. NO. 90 OF 2011.
- EXHIBIT R1(r): COPY OF THE COMMISSION REPORT SUBMITTED BY ADV. COMMISSIONER IN I.A. NO. 1912 OF 2012 IN O.S. NO. 90 OF 2011.
- EXHIBIT R1(s): COPY OF THE OBJECTION FILED BY THE FIRST RESPONDENT TO EXT R1(r) COMMISSION REPORT.
- EXHIBIT R1(t): COPY OF THE I.A. NO. 2979/2012 IN O.S. 90 OF 2011 FILED BY THE FIRST RESPONDENT.
- EXHIBIT R1(u): COPY OF THE I.A. NO. 1412/2013 IN O.S. 90 OF 2011 FILED BY THE FIRST RESPONDENT.
- EXHIBIT R1(v): COPY OF THE ORDER IN I.A. NO. 1412/2013 IN O.S 90 OF 2011.
- EXHIBIT R1(w): COPY OF THE ORDER IN I.A. NO. 2066 OF 2014 IN O.S. NO. 90 OF 2011.

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P.A. to Judge

P.BHAVADASAN, J.

O.P.(C) No. 2585 of 2014

Dated this the 07th day of July, 2015

J U D G M E N T

Under challenge are Exts. P31 and P34 orders. By Ext.P34 order dated 27.09.2013 in I.A.No.1412/2013, the court below overlooking the objections raised by the first respondent in the petition for removing Adv. N.N. Radhakrishnan, the Commissioner, for measuring the property with the help of a Taluk Surveyor, appointed Sri. Kunjukrishnan as the Commissioner.

2. I.A.No. 2066/2014 in O.S.No.90/2011 filed by the petitioner herein for deputing a retired surveyor was rejected by the court below.

3. The petitioner, who appears in person, now points out that there were no reasons as to why the earlier Commissioner was removed without setting aside the Commissioner's report. According to the petitioner, it is only

because that he was not willing to abide by the dictates of the other side that he has been condemned. The petitioner points out that there is no justification in removing him from conducting measurement of the property.

4. As regards the order in I.A.No. 2066/2014, the petitioner points out that he has no faith in any surveyor in service as there may be high pressure from the higher ups to which the person who is deputed to survey the land may succumb to. He therefore prays that a retired competent surveyor may be appointed.

5. As regards the first issue regarding the change of Commissioner, there may be some substance in the complaint voiced by the petitioner that without setting aside the earlier Commissioner's report, a fresh Commissioner could not have been deputed. On a close scrutiny, it can be seen that the second Commissioner now sought to be deputed is for an entirely different purpose. The earlier Commissioner was asked to visit the property to report

about the boundaries first and later on he was deputed to ascertain the damages caused to the boundaries. He had filed his reports.

6. The learned counsel appearing for the respondents before this Court in this proceedings pointed out that very serious allegations are raised against the earlier Commissioner and that persuaded the court below to remove the Commissioner. It is also pointed out by the learned counsel for the respondents that it is significant to notice that till the petition filed by the petitioner to remove the Taluk Surveyor who was deputed by the court below was dismissed, he had no grievance against the earlier order. It is only when his petition was dismissed that he comes forward with a complaint regarding the dismissal of the earlier petition.

7. The suit is of the year 2011. It is useful here to refer to the observation made by a Division Bench of this Court while disposing of W.P.(C) No. 19845/2012. It was

observed as follows:

“From the submissions made by the petitioner in person and the learned counsel for the sixth respondent, it is fairly clear that both parties do not intend to encroach upon each other's rights. The disputes, if any, between the parties are to be settled before the civil court. The parties cannot take law into their hands and create any law and order problem. It is submitted by the learned Government Pleader that if any law and order problem is created either by the petitioner or by respondents 6 to 11, certainly the police will interfere and diffuse the tension and take appropriate action against the earring person.”

8. In the writ petition disposed of by this Court, this Court observed that as regards the various disputed questions of facts, it is a matter to be resolved before the Civil Court.. Three years have been elapsed since then. The issues are still at large.

9. It is not in dispute that the respective properties will have to be measured to resolve the dispute between the

parties. Neither side has any objection in measuring the property. The only dispute is regarding the surveyor who is to make the measurement and the Commissioner who is to supervise the measurement and file a report.

10. It will be quite embarrassing for the earlier Commissioner, who was removed by the court below, to be asked to go again and do the work of measurement which is now entrusted to Adv. Kunjukrishnan by the lower court. Further, the purpose for which the present Commissioner is deputed is for measurement of the property with the help of a Taluk Surveyor while the purpose for which earlier Commissioner was deputed was to determine the boundaries as well as damages caused to the northern boundary. It could not be said that there could be a conflict between the two reports. In the light of the fact that allegations have been made against the earlier Commissioner, and the lower court thought it proper not to depute the same Commissioner for measurement of the

property, it will be inappropriate for this Court to ask the Commissioner, who has been removed, to go for measurement of the property.

11. At the same time, the grievance of the petitioner cannot also be overlooked. He has got an apprehension that any surveyor in service is likely to be influenced because persons involved are very influential in all respects. He therefore prays that a retired surveyor may be deputed for measurement of the property.

12. Even though there are no materials to justify the apprehension of the petitioner, in the light of the fact that since he feels that there may be a possibility of a surveyor in service being influenced, no harm would be caused to either of the parties if a retired surveyor is deputed to measure the property, it is felt that the prayer made by the petitioner can be considered.

For the above reasons, while dismissing the challenge against Ext.P34 order i.e., the order removing the

Commissioner, the court below is directed to depute a retired Surveyor from the panel of surveyors kept by the court for measurement of the property.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge