

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP(C).No. 2694 of 2014 (O)

**I.A. NO.3997/2013 IN O.S. NO.1684/2010 OF PRINCIPAL MUNSIF COURT,
IRINJALAKUDA.**

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PETITIONER(S):

- 1. SASIDHARAN, AGED 44 YEARS,
S/O. KANJIRATH MOOTIL RAMAKRISHNAN,
THRIKOOR VILLAGE DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.**
- 2. RATHI,
LATE MANTHENGARA SASI, THRIKOOR VILLAGE DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.G.SREEKUMAR (CHELUR).

RESPONDENT(S):

- 1. RAMACHANDRAN,
S/O. MULANGATUPARAMBIL VATTU,
THRIKOOR VILLAGE DESOM,
MUKUNDAPURAM TALUK-680 001.**
- 2. JOY, S/O. CHULLIKADAN KOCHANTHONY,
VILLAGE DESOM, MUKUNDAPURAM TALUK-680 001.**
- 3. AYYAPPAN,
S/O. ANNANAGARKARAN THANKAVELU & MANJAMMAL,
AQZHAKIYA PANDIPURAM P.O., KADHI PUTHUR,
KANYAKUMARI DISTRICT, NOW RESIDING AT
KALoor DESOM VILLAGE, MUKUNDAPURAM TALUK-680 001.**
- 4. AJITHA, W/O. ANNANAGARKARAN AYYAPPAN,
THRIKOOR VILLAGE DESOM,
MUKUNDAPURAM TALUK-680 001.**

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**5. VASUDEVAN, S/O. KAITHAVALAPPIL SUKUMARAN,
ERAVIMANGALAM DESOM, NADATHARA VILLAGE,
THRIKOOR TALUK, NOW RESIDING AT KALLUR VILLAGE DESOM,
MUKUNDAPURAM TALUK-680 001.**

**BY ADVS. SRI.K.M.JAMALUDHEEN,
SMT.LATHA PRABHAKARAN.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

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APPENDIX

PETITIONER'S EXHIBITS:-

- P1 : COPY OF THE PLAINT IN OS NO.1684 OF 2010 DTD. 11.11.2010 ON THE FILE OF THE MUNSIF COURT, IRINJALAKUDA.
- P2 : COPY OF THE COMMISSIONER'S REPORT AND PLAN DTD. 11.12.2013 IN EXT.P1 SUIT.
- P3 : COPY OF THE APPLICATION FILED AS IA. NO.3997 OF 2013 IN EXT.P1 SUIT DTD.17.10.2013.
- P4 : COPY OF THE ORDER PASSED BY THE LEARNED MUNSIF, IRINJALAKUDA IN IA NO.3997 OF 2013 IN EXT.P1 SUIT DTD. 16.07.2014.
- P5: COPY OF THE OBJECTION FILED BY THE PETITIONERS IN O.S. NO.1684/2010 DATED 19/12/2013 ON THE FILE OF THE MUNSIF COURT, IRINJALAKUDA.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

B.KEMAL PASHA, J.

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O.P.(C). No.2694 of 2014

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Dated this the 22nd day of June, 2015

J U D G M E N T

Exhibit P4 order in I.A.No.3997 of 2013 in O.S.No.1684 of 2010 of the Principal Munsiff's Court, Irinjalakkuda is under challenge.

2. Originally a commission application was filed by the plaintiffs as I.A.No.1404 of 2011. At the time when the application was pending, the petitioners herein had filed another application for the issue of a commission as I.A.No.2257 of 2012. As the application filed by the plaintiffs as I.A.No.1404 of 2011 was allowed, the petitioners have not pressed the application filed by them and consequently that was dismissed. The Commissioner has visited the properties, prepared a report and furnished it with the plan

appended with it.

3. After seeing the measurement being carried out, the petitioners became apprehensive of a correct report and plan in the matter. The fixation of the boundaries in respect of a pathway is in question. The said pathway is passing outside through the boundaries of D and D1 items belong to the petitioners. Item D was sold from D1. As the petitioners became apprehensive that the correct measurements were not made, they filed I.A.No.3997 of 2013 for the issue of another commission. The court below has dismissed the said I.A. through Exhibit P4 order.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

5. The learned counsel for the respondents has argued that the properties of the petitioners noted as item Nos. D and D1 are also identified by the Commissioner and the same have been marked in the plan. The learned counsel for the petitioners has pointed out that the Commissioner had taken a view that the properties covered

by the original document could not be identified as the original document was not made available. It is true that two plots have been marked as D and D1 in the plan. At the same time, the Commissioner's report clearly reveals that the said plots were not identified on the basis of the documents. It seems that the request made by the petitioners ought to have been attended to properly for the proper adjudication of the matter in controversy in the suit, especially when the suit relates to the fixation of the boundaries of the said pathway. It seems that the properties of the petitioners have not been properly identified. The earlier Commissioner can once again be deputed to note down the matters requested to by the petitioners in Exhibit P3.

In the result, this Original Petition (Civil) is allowed and Exhibit P4 is set aside. The court below is directed to depute the earlier Commissioner once again to note down the matters requested to by the petitioners in Exhibit P3. The petitioners shall pay necessary Bata as may be

ordered. The respondents also, if so advised, may issue a work memo to the Commissioner for ascertaining matters of their choice, if required.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/23/6/15