IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 25TH DAY OF JULY 2024 / 3RD SRAVANA, 1946

OP(C) NO. 328 OF 2018

AGAINST THE ORDER DATED 18.12.2017 IN OS NO.119 OF 2003 OF SUB COURT, KATTAPPANA

PETITIONER/1st RESPONDENT:

VISHWA HINDU PARISHAD
REPRESENTED BY ITS DISTRICT SECRETARY,
P.N.VINOD, IDUKKI DISTRICT COMMITTEE, AYYAPPANKOIL,
UDUMBANCHOLA TALUK, IDUKKI DISTRICT-685 507
BY ADV SRI.M.P.ASHOK KUMAR

RESPONDENTS/PETITIONERS, RESPONDENTS 2 TO 12:

1 **THE KERALA STATE ELECTRICITY BOARD,**
REPRESENTED BY TIS SECRETARY, VYDHYUTHIBHAVANAM,
PATTAM P.O., THIRUVANANTHAPURAM-695004.

2 **THE DEPUTY DIRECTOR**
RESEARCH DIVISION NO.11, KERALA STATE ELECTRICITY BOARD, VAZHATHOPE KARA, IDUKKI VILLAGE, IDUKKI COLONY P.O-685602.

3 **M.N.MOHANAN**
MANKOOTTATHIL HOUSE, PRESIDENT, TEMPLE COMMITTEE,AYYAPPANCOIL KARA, VILLAGE, UDUMBANCHOLA TALUK,IDUKKI DISTRICT-685 507.

4 **RAJESH SUKUMARAN**
CHELLAKKAL HOUSE, SECRETARY, TEMPLE COMMITTEE, AYYAPPANCOIL KARA, VILLAGE, UDUMBANCHOLA TALUK, AYYAPPANCOIL P.O.,IDUKKI DISTRICT-685 507.

5 **MANOJ VISWAMBARAN**
MUKULEL HOUSE, CONVENOR, TEMPLE COMMITTEE, AYYAPPANCOIL KARA, VILLAGE, UDUMBANCHOLA TALUK, AYYAPPANCOIL P.O.,IDUKKI DISTRICT-685 505.

6 **K.N.RAJENDRAN**
DISTRICT PRESIDENT, V.H.P. IDUKKI DISTRICT COMMITTEE,AYYAPPANCOIL VILLAGE, UDUMBANCHOLA TALUK, UPPUTHARA P.O., IDUKKI DISTRICT-685 505.

7 **T.K.RAJU**
DISTRICT ORGANIZING COMMITTEE, TEMPLE COMMITTEE, AYYAPPANCOIL VILLAGE, UDUMBANCHOLA TALUK, MATHAYIPARA P.O., IDUKKI DISTRIC-685 505.

8 B.SUKUMARAN
FORMER SECRETARY, VISWA HINDU PARISHAD, IDUKKI DISTRICT COMMITTEE, AYYAPPANCOIL VILLAGE,UDUMBANCHOLA TALUK, KOCHUKARUNTHARRUVI P.O.,IDUKKI DISTRICT-685 501.

9 P.N.VINOD
KATTAPPANA MEKHALA SECRETARY, VISWA HINDU PARISHAD, IDUKKI DISTRICT COMMITTEE, AYYAPPANCOIL VILLAGE, UDUMBANCHOLA TALUK, KOCHUKARUNTHARRUVI P.O.,IDUKKI DISTRICT-685 507.

10 THEVAN RAJA MANAN(DIED)
REPRESENTD BY RAMAN RAJA MANNAN, KOZHIMALA, AYYAPANCOIL VILLAGE, UDUMBANCHOLA TALUK,KOVILMALA P.O., KATTAPPANA, IDUKKI DISTRICT - 685 511.

11 GOVINDA SASTHRI
PANAMATTAM HOUSE, PONKUNNAM P.O., KOTTAYAM-686 575.

12 SATHEESH KUMAR
S/O RAMACHANDRAN, KULANGARAKKAL HOUSE, UPPUTHARA KARA, AYYAPPANCOIL VILLAGE, UDUMPANCHOLA TALUK, UPPUTHARA P.O.,IDUKKI DISTRICT - 685 505.

13 T.K. RAJU
S/O T.S.KRISHNAN, THOTTUVAYIL HOUSE, UPPUTHRAKARA, VISWA HINDU PARISHAD, IDUKKI DISTRICT COMMITTEE, AYYAPPANCOIL VILLAGE, UDUMBANCHOLA TALUK,UPPUTHARA P.O., IDUKKI DISTRICT-685 505.

14 SREE DHARMA SASTA TEMPLE DEITY THOPPIPALA
REPRESENTED BY ITS CHAIRMAN, THIPPIPPALA KARA, AYYAPPANCOVIL VILLAGE, UDUMBANCHOLA TALUK, THOPPIPPALA P.O., IDUKKI DISTRICT-685 511.

BY ADVS.
SRI.RAJU JOSEPH (SR.)
SRI.GEORGEKUTTY MATHEW, SC, KSEB
SRI.JOSEPH ANTONY C

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 25.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 25th day of July, 2024

The challenge in this Original Petition is directed against Ext.P3 order of the learned Sub Judge, Kattappana, which remitted Ext.C9 Commission report and Ext.C9(a) plan to the Commissioner, so as to locate the plaint schedule property as per the records.

2. The main grievance espoused by the learned counsel for the petitioner is that, Ext.P3 order was passed without there being any objection to the Commissioner's report; and at a time, when the Commissioner, as also, the Taluk Surveyor, has already been examined. It is the further grievance of the petitioner that, Ext.P3 order was passed only on an application made by the counsel for the plaintiff.

3. In answer to the same, learned Senior Counsel appearing for respondents 1 and 2 would submit that, Ext.P3 order is justified in law and that Ext.P3 serves the purpose of substantive justice, as otherwise the suit is liable to be dismissed for a technical snag.

4. Having heard the learned counsel appearing for the respective parties, this Court finds no reason to interfere with Ext.P3 impugned order. It is true that Ext.P3 was passed after commencement of the trial, which fact is specifically taken stock of in Ext.P3 itself. The suit in question was one for declaration of title of the plaint schedule property. The learned Sub Judge rightly took stock of the fact that, identification of the property is a *sine qua non* for grant of declaration of title. In the evidence, the Taluk Surveyor spoke to the effect that the property has not been

identified. He would also add that, the property is capable of being identified by virtue of revenue records. It was in such circumstances, that the learned Sub Judge chose to pass Ext.P3 order, remitting the Commissioner's report and plan to the Commissioner, for proper identification of the property. The obvious intention was to prevent dismissal of a suit for the technical reason that the property has not been identified. This is all the more so, when the Taluk Surveyor, an expert in the field, would depose that the property is capable of being identified by virtue of revenue records. In the circumstances, this Court finds no reason to interfere with the impugned Ext.P3 order.

5. Ext.P3 is accordingly confirmed. This Original Petition will stand dismissed.

6. However, this Court notice that, the suit in question is of the year 2003, which is more than 20 plus years old. In the circumstances, there will be direction to the learned Sub Judge to closely monitor the proceedings of the Commissioner in identifying the property, so as to expedite the same. The entire exercise for identifying the plaint schedule property shall be completed within a period of three weeks from the date of commencement of the work, which time line has to be scrupulously observed by all concerned. Necessary instructions in this regard shall be given by the learned Sub Judge to the Advocate Commissioner, as also, the Taluk Surveyor. This being a measurement in connection with a case, which is more than 20 years old, the Taluk Surveyor is directed to give utmost priority to the measurement contemplated in this suit and under no circumstance, there shall be any reluctance/hesitation in affording appropriate

date for measurement of the property. The work shall be completed in a foolproof manner and the report shall be submitted as expeditiously as possible, at any rate within the time limit prescribed by the learned Sub Judge.

7. Once the report is filed, a formal opportunity for objection, if any, will be afforded to the parties, whereafter, the matter will immediately be scheduled for further trial. There will be a further direction to the learned Munsiff to dispose of the matter within a period of one month from the date of filing the Commissioner's report and plan.

Sd/-
C. JAYACHANDRAN
JUDGE

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APPENDIX OF OP(C) 328/2018

PETITIONER EXHIBITS

EXHIBIT P1:	**PHOTOCOPY OF THE JUDGMENT IN CRP NO.189/2016 DATED 3.3.2017.**
EXHIBIT P2:	**PHOTOCOPY OF THE IA NO.1146/2017.**
EXHIBIT P3:	**PHOTOCOPY OF THE ORDER PASSED BY THE SUB COURT, KATTAPPANA IA NO.1146/2017 IN OS NO.119/2003.**