



2025:KER:27775

O.P (C) No.103 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947

OP (C) NO. 103 OF 2020

AGAINST THE ORDER DATED 17.12.2019 IN I.A NO.3743 OF 2019

IN OS NO.495 OF 2008 OF MUNSIFF'S COURT, ATTINGAL

PETITIONER/3RD DEFENDANT:

SAINARANI,
AGED 46 YEARS,
D/O.BALAN, SRILANKAPURI, CHERUNNIYOOR VILLAGE,
CHIRAYINKEEZHU TALUK,
THIRUVANANTHAPURAM DISTRICT, PIN-695142

BY ADVS.
M.R.RAJESH
E.S.SANDHYA

RESPONDENTS/PLAINTIFF AND DEFENDANTS 1,2,4 TO 7:

- 1 NAINARANI,
W/O.ROY, SRILANKAPURI,
CHERUNNIYOOR VILLAGE,
CHIRAYINKEEZHU TALUK,
THIRUVANANTHAPURAM DISTRICT, PIN-695142
- 2 OMANA,
W/O.BALAN, SRILANKAPURI,
CHERUNNIYOOR VILLAGE,
CHIRAYINKEEZHU TALUK,
THIRUVANANTHAPURAM DISTRICT PIN-695142



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- 3 GOVINDA RAJ SEN,
 S/O.BALAN, SRILANKAPURI,
 CHERUNNIYOOR VILLAGE, CHIRAYINKEEZHU TALUK,
 THIRUVANANTHAPURAM DISTRICT PIN-695142

- 4 UDHAYALAL,
 S/O.DHARMADASAN, SRILANKAPURI,
 CHERUNNIYOOR VILLAGE, CHIRAYINKEEZHU TALUK,
 THIRUVANANTHAPURAM DISTRICT, PIN-695142

- 5 ANILKUMAR,
 S/O.GOPALAN, PUTHENVEEDU, PUTHUSSERIMUKKU.P.O,
 KALLAMBALAM,
 THIRUVANANTHAPURAM DISTRICT PIN-695605

- 6 GOVINDA RAJ BEN,
 S/O.BALAN, SRILANKAPURI, DELAVAPURAM,
 CHERUNNIYOOR DESOM AND VILLAGE,
 CHIRAYINKEEZHU TALUK,
 THIRUVANANTHAPURAM DISTRICT, PIN-695142, NOW
 RESIDING AT 6 WORTHLY ROAD,
 EAST HAM, LONDON E61AY

- 7 BALARAVANAN,
 S/O.BALAN, SRILANKAPURI, CHERUNNIYOOR VILLAGE,
 CHIRAYINKEEZHU TALUK,
 THIRUVANANTHAPURAM DISTRICT, PIN-695142

BY ADVS.
M.BALAGOVINDAN
MINI GANGADHARAN (K/000068/2000)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
25.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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K.BABU, J.

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Dated this the 25th day of March, 2025

JUDGMENT

The challenge in this Original Petition is to the order dated 17.12.2019 in I.A No.3743/2019 in O.S No.495/2008 on the file of the Munsiff's Court, Attingal.

2. The petitioner is defendant No.3 in the Original Suit. The suit is filed for declaration of title and fixation of boundary. The Court appointed a Commissioner to measure out the properties based on the title deeds relied on by the parties. A Surveyor was appointed to assist the Commissioner. The Commissioner submitted Ext.C2 series report, mahazar and plan. Based on the rival contentions and the materials placed before the Court, the Trial Court proceeded with the trial.

3. During the course of trial, the plaintiff filed I.A No.3743/2019 contending that the location of plaintiff's schedule item



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Nos.1 and 2 properties is incorrectly shown in the commission report. The plaintiff further pleaded that the plaintiff A schedule item No.2 property lies on the western side of the plaintiff A schedule item No.1 property.

4. The petitioner/defendant No.3 resisted the application, contending that the plaintiff was amended in tune with the report and plan. The petitioner contended that based on the deposition of the Surveyor that the plaintiff A schedule item No.2 property lies on the western side of the plaintiff A schedule item No.1 property and that the locations are incorrectly shown in the report, the Court is not competent to set aside the report and plan.

5. The Trial Court held that the question of setting aside the report, which has become part of the evidence as per Order XXVI Rule 10(2) of the CPC, does not arise. The Court further held that since the actual and exact location of the properties has to be cleared to resolve the real dispute between the parties, further inputs are required. Therefore, the Trial Court appointed the same



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Commissioner to conduct a local investigation and file a separate report and plan in accordance with the dimensions and special recitals in the title deeds. The Court further held that as the report and plan have become part of the evidence, issuance of a fresh Commission will not cause any prejudice to the petitioner/defendant No.3.

6. The learned counsel for the petitioner submitted that the Court below has not recorded any cogent reason for issuing a fresh commission, and Ext.C2 report and plan have been prepared based on the descriptions in the title deeds and the relevant documents.

7. The learned counsel for the respondents submitted that the Court is empowered to obtain further inputs for resolving the real dispute between the parties. The Surveyor was examined as a witness. He stated that the location of the properties, as noted in Ext.C2 series, is incorrect. He stated that the plaint A schedule item No.2 property actually lies on the western side of the plaint A schedule item No.1 property, and its location is incorrectly shown in



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the report.

8. The learned counsel for the petitioner relied on **Laly Joseph v. Francis [2023 (2) KLT 516]** to contend that the Court has to record cogent reasons for remitting a report. In the present case, the Court below recorded that the location of the properties has been incorrectly recorded in the plan and report and further that the extent of the properties are also wrongly recorded. The Court is of the view that the actual and exact location of the properties has to be elucidated for the purpose of resolving the dispute between the parties. Therefore, invoking Order XXVI Rule 10(3) of the CPC, the Court directed a further inquiry.

9. The law on this question was considered by a Division Bench of this Court in **Laly Joseph**. This Court, in paragraph 10 of the judgment, held thus:

"10. The present dilemma has arisen in the matters relating to the appointment of the Commissioner for local investigation. It is true that there is no specific mention about setting aside the report under O.XXVI R.10(3) of the Code, as it only refers to conduct further 'enquiry'. There is no embargo, according to us, for setting aside a commission report if the court



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is totally dissatisfied with the commission report. It is also open for the court to remit the commission report for further inquiry, so also to appoint a fresh commission without setting aside the earlier commission report. The court can very well appreciate both reports and decide accordingly at the time of the trial.....”

10. The learned counsel for the petitioner submitted that a further inquiry is possible only when the Court is dissatisfied with the proceedings of the Commissioner.

11. Relying on the pleadings in the petition, objections filed by the petitioner/defendant No.3, and the deposition of the Surveyor, the Court came to the conclusion that the actual and exact location of the properties has not been ascertained. This is a clear dissatisfaction with the report and plan already submitted. It is pertinent to note that the report and plan produced by the Commissioner and marked as Ext.C2 series have become part of the evidence as contained in Order XXVI Rule 10 (2) of the CPC.

12. In **Laly Joseph**, the Division Bench of this Court made it clear that the Court can very well appreciate both reports and decide accordingly at the time of trial. It is premature for this Court



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to make any observation on the merit of the contentions raised by the parties. Exercising the discretionary power under Order XXVI Rule 10(3) of the CPC, the Court issued a Commission to get further input. Therefore, I find no reason to interfere with the order impugned exercising jurisdiction under Article 227 of the Constitution of India.

13. I make it clear that I have not made any observation on the merit of the matter. The Trial Court shall appreciate the evidence in the matter untrammelled by any of the observations made in this judgment and Ext.P6 order.

14. The suit is of the year 2008. The Court below is directed to expedite the trial and dispose of the matter, at any rate, within a period of eight months from the date of production of a certified copy of this judgment.

The Original Petition is dismissed as above.

Sd/-
K.BABU,
JUDGE

KAS



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APPENDIX OF OP(C) 103/2020

PETITIONER EXHIBITS

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| EXHIBIT P1 | A TRUE COPY OF THE AMENDED PLAINT IS
O.S.NO.495/2008 OF THE FILE OF THE
MUNSIFF'S COURT, ATTINGAL. |
| EXHIBIT P2 | A TRUE COPY OF THE DEPOSITION OF
PW1/PLAINTIFF IN EXT.P1 SUIT |
| EXHIBIT P3 | A TRUE COPY OF THE DEPOSITION OF
PW4/SURVEYOR IN EXT.P1 |
| EXHIBIT P4 | A TRUE COPY OF IA NO.3743/2019 IN
EXT.P1 SUIT |
| EXHIBIT P5 | A TRUE COPY OF THE OBJECTION FILED TO
EXT.P4 |
| EXHIBIT P6 | A TRUE COPY OF THE ORDER DATED
17.12.2019 OF THE MUNSIFF'S COURT,
ATTINGAL IN EXT.P4 PETITION |