



2025:KER:30708

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947OP(C) NO. 2953 OF 2024

OS NO.94 OF 2017 OF PRINCIPAL MUNSIFF, KASARAGOD

PETITIONER/S:

MUKTHAR
AGED 54 YEARS
S/O LATE T.A. ISMAIL. RESIDING AT THERUVATH, THALANGARA
VILLAGE, KASARAGOD, PIN - 671122

BY ADVS.
R.ANAS MUHAMMED SHAMNAD
SARUN RAJAN
SALEEK.C.A.
THAREEK T.S.

RESPONDENT/S:

- 1 T.A MOHAMMED FAROOQUE
S/O LATE T.A. ABBAS, R/AT SAKOORA HOUSE, LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND
DISTRICT, PIN - 671122
- 2 FAZAL RAHMAN
S/O LATE ISMAIL T.E. AND LATE NAFEESA, R/AT LT. HASHIM
STREET, THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD
TALUK AND DISTRICT., PIN - 671122
- 3 MAIMOONA
D/O LATE ISMAIL T.E. AND LATE NAFEESA, R/AT LT. HASHIM
STREET, THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD
TALUK AND DISTRICT., PIN - 671122
- 4 HAJIRA
D/O LATE ISMAIL T.E. AND LATE NAFEESA, R/AT LT. HASHIM
STREET, THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD
TALUK AND DISTRICT., PIN - 671122



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- 5 HANEEF
HUSBAND OF LATE THAHIRA R/AT LT. HASHIM STREET, THERUVATH,
THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND DISTRICT.,
PIN - 671122
- 6 NAKHAS
S/O HANEEFA, R/AT LT. HASHIM STREET, THERUVATH, THALANGARA
VILLAGE AND POST, KASARAGOD TALUK AND DISTRICT., PIN -
671122
- 7 SHAHUL HAMEED
S/O LATE ISMAIL T.E. AND LATE NAFEESA, R/AT LT. HASHIM
STREET, THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD
TALUK AND DISTRICT., PIN - 671122
- 8 ABDULLA
S/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND
DISTRICT., PIN - 671122
- 9 HUSSAIN
S/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND
DISTRICT., PIN - 671122
- 10 HAMZA
S/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND
DISTRICT., PIN - 671122
- 11 ZUBAIDA
D/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND
DISTRICT., PIN - 671123
- 12 SULAIMAN
S/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND
DISTRICT., PIN - 671122
- 13 JAMEELA
D/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND
DISTRICT., PIN - 671122
- 14 AYISHATH THASNI
D/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET,
THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND



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DISTRICT., PIN - 671122

- 15 FATHIMA, D/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND DISTRICT., PIN - 671122
- 16 ABDUL RAHIMAN, S/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND DISTRICT., PIN - 671122
- 17 MOIDEEN, S/O LATE MOHAMMAD T.A. AND AWABI, R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE AND POST, KASARAGOD TALUK AND DISTRICT., PIN - 671122
- 18 ASMA, W/O LATE ABBAS T.A., R/AT LT. HASHIM STREET, THERUVATH, THALANGARA , KASARGOD, PIN - 671122
- 19 ABDUL MAJEED
S/O LATE ABBAS T.A., R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE , KASARGOD, PIN - 671122
- 20 ABDUL MANAF, S/O LATE ABBAS T.A., R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE , KASARGOD, PIN - 671122
- 21 ABDUL MUNEER
S/O LATE ABBAS T.A., R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE , KASARGOD, PIN - 671122
- 22 ABDUL MALIK
S/O LATE ABBAS T.A., R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE , KASARGOD, PIN - 671122
- 23 NASEEMA, D/O LATE ABBAS T.A., R/AT LT. HASHIM STREET, THERUVATH, THALANGARA VILLAGE , KASARGOD, PIN - 671122

BY ADVS.M.T.SURESH KUMAR
T.U.SUJITH KUMAR
N.MANU THAMPI(K/1192/2004)
MANJUSHA K(K/000191/2018)
B.VINOD(K/653/1996)
E.C.AHAMED FAZIL(K/555/2016)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03.04.2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT(Dated this the 3rd day of April 2025)

The petitioner, is the 3rd defendant in O.S.No.94 of 2017 on the files of the Principal Munsiff Court, Kasaragod. The 1st defendant is the plaintiff . The suit was filed for declaration and partition. Defendants filed written statement. An application to appoint an Advocate Commissioner was filed and the trial court allowed the same, and the Commissioner filed a report as Ext.P3.

2. According to the petitioner, the commissioner omitted to identify the plaint B schedule and the boundaries are also not clear. Thus, the commission report was of no use for the proper disposal of the suit. In such circumstances, the petitioner filed Ext.P4 an application under Order 26 Rule 10 and Section 151 CPC to refer back the Advocate Commissioner report and plan. The 1st defendant filed Ext.P5 objection. Thereafter, the trial court by Ext.P6 order dated 25.10.2024, dismissed the application



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finding that the Commissioner has properly identified B schedule in the report and plan. Aggrieved by Ext.P6 order, this O.P.(C) is filed under Article 226 of the Constitution of India.

3. As per the plaint B schedule, the total extent of property is 34 cents in 4 re-sy. numbers having different extents.

4. The defendants do not dispute the extent in the written statement. But when the Commissioner visited the property and identified B schedule, he could find only 28.462 cents of property in 4 re-survey numbers. In two re-survey numbers, there is a shortage of land. The Commissioner has not stated in the report and plan as to the balance extent of 5.53 cents or with whom the land lies. Moreover, a footpath is shown inside the plaint schedule between the two houses marked as AH and BH. The extent of the property used for foot path is also not available in the plan. The report also does not state as to whether it is included in the plaint B schedule property.



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5. In the objection filed by the petitioners they claimed that the property in Re.sy no.42/2BB1 and 42/2CB2 having an extent of 2.5 cents and Re.sy 42/1CB5 are in the possession of the plaintiff. But it is in the possession of the 3rd defendant. Ext.P6 order is silent about this aspect. Moreover, on a perusal of a plan attached to Ext.P3, it is not clear as to the identification of 4 different properties. If the total extent of property as per the plaint is available at site, it will only benefit the plaintiff as well as the defendant. In such circumstances, I am of the considered opinion that court below should have remitted the Commission report back to the same Commissioner to get a further report as to the total extent of property actually available for partition and also to find the shortage, if any, and in whose possession the same lies.

In the result, this O.P.(C) is allowed and Ext.P6 order in I.A.No.1 of 2024 in O.S. No.94 of 2017 passed by the Principal Munsiff, Kasaragod, is set aside and the trial court is directed to



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remit the Commissioner Report back to the same Commissioner to enable the Commissioner to file a proper report with the plan, with the help of the Taluk Surveyor.

Sd/-
BASANT BALAJI
JUDGE

dl/



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APPENDIX OF OP(C) 2953/2024

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE PLAINT DATED 05/04/2017 IN O.S. 94/2017 BEFORE THE HON'BLE COURT OF THE PRINCIPAL MUNSIFF, KASARAGOD
- Exhibit P2(a) THE TRUE COPY OF THE WRITTEN STATEMENTS DATED 03/08/2017 FILED BY THE DEFENDANTS 18 TO 21 AND 23
- Exhibit P2(b) THE TRUE COPY OF THE WRITTEN STATEMENTS DATED 16/11/2017 FILED BY THE DEFENDANT NO. 10
- Exhibit P2(c) THE TRUE COPY OF THE WRITTEN STATEMENTS DATED 16/11/2017 FILED BY THE PETITIONER
- Exhibit P3 THE TRUE COPY OF THE COMMISSION REPORT DATED 31/07/2024 ALONG WITH THE SKETCH PREPARED BY THE COMMISSIONER IN O.S. 94/2017 BEFORE THE HON'BLE COURT OF THE PRINCIPAL MUNSIFF, KASARAGOD
- Exhibit P4 THE TRUE COPY OF THE APPLICATION DATED 17/08/2024 SUBSEQUENTLY NUMBERED AS I.A. I.A. 1/2024 IN O.S. 94/2017 BEFORE THE HON'BLE COURT OF THE PRINCIPAL MUNSIFF, KASARAGOD
- Exhibit P5 THE TRUE COPY OF THE OBJECTION DATED 03/10/2024 IN I.A. 1/2024 IN O.S. 94/2017 BEFORE THE HON'BLE COURT OF THE PRINCIPAL MUNSIFF, KASARAGOD
- Exhibit P6 THE TRUE COPY OF THE ORDER DATED 25/10/2024 IN I.A. 1/2024 IN O.S. 94/2017 BEFORE THE HON'BLE COURT OF THE PRINCIPAL MUNSIFF, KASARAGOD