

IN THE COURT OF THE SUB JUDGE, ALAPPUZHA
Present: Sri. P.K.Mohandas, Sub Judge, Alappuzha
Tuesday 5th day of July, 2016/ 16th Ashadom 1938

I.A.83/2014 & I.A.114/13 in O.S.13/2010
(Filed on 23.01.2014.)

Petitioner/Plaintiff: K.J.George, S/o Mathew,
Kunnel Kochuparambil, Thekke Muri,
Edathua Village, Alappuzha.

By Adv. Sri. K.S. Hariharaputhran

Cr. Petitioner/Defendant: K.M.Chacko, S/o Mathew (Late),
Kunnel Kochuparambil, Thekke Muri,
Edathua Village, Alappuzha.

This petition having been finally heard on 16.06.2016 and the court on 05.07.2016 passed the following:

ORDER

Application to set aside the Commissioner's sketch and report.

2. The petitioner's case is that as per the preliminary decree, the plaint schedule property was directed to be divided into six equal shares and two such share are to be allotted to the petitioner and 4 shares is to be allotted to the share of the respondent/final decree petitioners. The commissioner inspected the property has submitted sketch, report and mahassar dividing the property. According to the petitioner, the property set apart to the share of the respondents is situated on the side of the panchayath road. The property in Sy. No.585/3 has got a fair value of Rs.60,000/- per are and will fetch a market value of Rs.75,000/- per cent. The commissioner has calculated the price of the land at the rate of Rs.12,000/- per cent and 21.5 cents of land is set apart to the share of the respondent. In addition to that, 3.5 cents of land calculating a value of Rs.4,000/- per cent in the same

survey number is also set apart to the respondents. The commissioner has shown the value of the property set apart to the share of the petitioner at Rs.9,000/- per cent and that property having no road frontage will fetch only a value of Rs.3,000/- per cent. So the allotment made by the commissioner is without any basis. The commissioner has set apart more property to the respondents than what they are entitled to.

3. The respondents filed objection contending that there is no mistake in the commissioner's sketch and report and the valuation was properly done.

4. When the matter came up for consideration, the commissioner was examined as CW1 and Exts. C1 series marked. Ext.A1 and B1 also marked. I have heard the counsel appearing for both sides.

5. The main grievances of the petitioner on the report and sketch submitted by the commissioner is regarding the valuation. The commissioner has suggested plot A2-A3-A5-A8-A2 having an extent of 25 cents to the share of the respondents in addition to plot A23-A22-A21-A24 having an extent of 3 cents and plot A17-A16-A14-A13-A20-A21-A17 having an extent of 1.5 cents. He has suggested plot A25-A18-A22-A23-A25 having an extent of 10 cents and plot A14-A15-A16-A17-A18-A19 having an extent of 13.5 cents to the share of the petitioner herein. The main grievance of the petitioner is that the property proposed to be allotted to the respondents is abutting the Panchayath road, and the property proposed to the petitioner has no road access. The Commissioner has valued 21.5 cents in the first plot at Rs.12,000/- percent and 3.5 cents in the same survey number and plot at the rate of Rs.4,000/- percent. Whereas, the property in which the house proposed to be allotted to the petitioner is situated is valued at Rs. 9000/-. When examined before the court, the Commissioner admitted that he had not seen any document showing the value of the property comprising Sy. No. 585/3. He admitted that the property having road frontage is in Sy. No. 585/3 and he has valued the property on the basis of the fair value fixed for the property in Sy. No. 585/1. He admitted that the fair value of Rs.10,000/- was fixed for the wet land in Sy. No. 585/1, whereas, the property in dispute is reclaimed land with house and

improvements and adjacent to the road. He admitted that the property proposed to be allotted to the petitioner has no road frontage. It is only common sense that the property abutting the road will get more value than the property situated away from the road. The Commissioner stated that he has assessed the value of the property in Sy. No. 585/3 on local enquiry. He has not shown any explanation/reason for arriving such a conclusion. The petitioner has produced the copy of the fair value notification pertaining to Sy. No.585/3 and the value shown therein is Rs.60,000/- per are. The fair value of the property in Sy. No. 585/1 is only Rs.10,000/- per are. This shows that the property in Sy. No.585/3 will fetch more than the property in Sy. No.585/1. Both properties cannot be equated. The petitioner is also disputing the value suggested by the Commissioner to the properties proposed to be set apart to him. It is true that while dividing the property in a partition suit it is only necessary to take a notional valuation and it is not always necessary to find out the exact market value. But, the valuation must be reasonable and same yardstick is to be applied to all the properties. In this case the Commissioner has suggested a value of Rs.12,000/- per cent for the property abutting the road, whereas, the value suggested for a property having no road frontage is Rs.9,000/-. On going through the report submitted by the Commissioner and the evidence given by him during cross examination by the counsel for the petitioner and other documents before me, I am of the view that the Commissioner has not suggested the division in the spirit of the preliminary decree. The valuation shown by the Commissioner is not proper. When examined before the court the Commissioner has deposed that according to his belief whatever things done by him is correct and there are no errors. The stand taken by the Commissioner while in the box shows that the purpose of the petition may not be served by remitting the report and sketch to the same Commissioner. As the report and sketch do not suggest a proper and equitable division of property in terms of the preliminary decree, it is necessary to set aside the report, sketch and mahassar submitted by the Commissioner and a new advocate Commissioner is to be appointed.

In the result, the petition is allowed and Ext.C1 series, report, sketch and mahassar of the Commissioner, are set aside. Advocate N.Azhakesan is appointed as Commissioner. The petitioner shall pay a sum of Rs.4,000/- as batta to the Commissioner

and produce voucher. He shall also deposited sum of Rs.1,000/- as batta to the surveyor and produce the challan.

Dictated to, and transcribed in "Dragon NaturallySpeaking Software", corrected and pronounced by me in open court on this the 5th day of July, 2016.

Sd/-
P.K.MOHANDAS,
SUB JUDGE.

APPENDIX

Exhibits for the Petitioner

A1: :Photocopy of Partition Deed

Exhibits for the Cr.Petitioner:

B1: Copy of Settlement Register dated 10.11.2014

Court Exhibits:

C1 Series: Commission report , Sketch & Mahazer prepared by
Adv. D. Sahadevan Nair

C1(c): Plan prepared by M.N.Gopinadhakurup (Rtd Surveyor)

Court Witness:

CW1: Adv. Sri. D. Sahadevan Nair

Sd/-
SUB JUDGE.