

**IN THE COURT OF THE SUB JUDGE, ALAPPUZHA**  
**Present: Sri.S.K.Anil Kumar, M.A; LL.B; Sub Judge**  
**Saturday 16<sup>th</sup> day of December, 2017/ 25<sup>th</sup> Karthikam 1939**

**(F.D) I.A.411/2013 in O.S.13/2010**  
**(Filed on 05.04.2013)**

**Petitioner/Defendant:** K.M.Chacko, aged 65, S/o Mathew (Late),  
Kannel Kochuparambil, Thekkum Muri,  
Edathuva Village, Alappuzha.

*By Adv.Sri.T.A.Rajeev*

**Cr.Petitioner/Plaintiff:** K.J.George, aged 66, S/o Mathew,  
Kannel Kochuprambil,  
Thekkum Muri, Edathuva Village, Alappuzha.

By Adv.Sri.K.S. Hariharaputhran

This Final Decree application filed under Order XX Rule 12 r/w section 151 of Code of Civil Procedure having been finally heard on 06.12.2017 and the court on 16.12.2017 passed the following:-

**ORDER**

The Defendant in OS.13/10 has filed the above final decree application to pass a final decree in tune with the Preliminary decree dated 29.01.13.

2. The averments in the application are as follows:- The defendant is the petitioner in this FDIA. The respondent is the plaintiff. This court passed a preliminary decree in this case on 29.01.13. on the following lines.

- a. Plaintiff schedule property is partible
- b. The plaintiff is entitled to get 2/6 shares of the plaintiff schedule property.
- c. The parties directed to file final decree application in 3 months.
- d. The suit is adjourned sine die.

e. No order as to cost.

3. The defendant filed this final decree application to allot his 4/6 share over the plaint schedule property. The plaintiff appeared before court and contested the case. This court, as per the request of the defendant appointed an advocate commission to prepare report and plan to effect physical division on the basis of the preliminary decree dated 29.01.2013. This court as per the order in IA 411/13 appointed an advocate commission. The commissioner inspected the property and filed report and plan.

4. The plaintiff was not satisfied with the way of effecting division of shares by the commissioner. Therefore, the plaintiff filed application IA. 83/14 to set aside the commission report. This court after hearing both sides, allowed IA. 83/14 filed by the plaintiff and set aside the commission report filed by Adv. Mr. Sahadevan Nair and appointed Adv. Mr. Azhakesan as the new commissioner. The petitioner in IA. 83/14 (plaintiff) was also directed to pay commission batta of Rs.4000/- to the commissioner.

5. Aggrieved by the order dated 5-7-16 in I.A. 83/14, the defendant filed OP(C) 1946/2016 before the Hon'ble High Court of Kerala to set aside order dated 5.7.16 in I.A. 83/14 of this court. The Hon'ble High Court of Kerala as per its judgment dated 28.02.17 disposed off the OP(C) 1946/2016 as follows:-  
*“Considering the facts and circumstances, this court is of the view that the above commission report and plan and sketch already submitted by the commissioner need not be set aside. However, the move to appoint Adv. Sri, Azhakesan need not be interfered with. Let Adv. Sri Azhakesan conduct inspection and file report with the*

*help of a Surveyor. The court shall advert to both the report at the time of final decree proceedings and accept either of them for passing final decree. The parties are directed to produce the necessary materials before Adv. Sri. Azhakesan to fix the valuation of the property”*

6. Thus, a perusal of the judgment of the Hon'ble High Court of Kerala, it is found that the original commission report prepared and reported by Mr. Sahadevan Nair was not set aside by the Hon'ble High Court of Kerala; but granted an opportunity to parties to measure the properties once again with the help of Adv. Azhakesan on the basis of the valuation, as disputed by the defendant. According to the Hon'ble High Court of Kerala, the move of this court to appoint Mr. Azhakesan as the commissioner need not be interfered with and directed Mr. Azhakesan to conduct inspection of the properties and file report with the help of a surveyor. Accordingly, this court directed Mr. Azhakesan (Adv. Commissioner) to inspect the properties and posted the case to 15.9.17 for Commission report.

7. The defendant is satisfied with the commission report filed by Adv. Sahadevan Nair. Since the plaintiff is the aggrieved party and filed objection to the commission report; and wants another report on the basis of valuation of properties, this court directed the plaintiff to pay Rs.4,000/- to the commissioner and Rs.1000 to surveyor. Even though 3 opportunities (postings) were given to the plaintiff for paying remuneration to the commissioner, the plaintiff did not pay batta to the commissioner. Finally, on 15.11.17, both parties submitted before court that they are not interested to pay the commission batta to the commissioner. According to the defendant, he is not liable to pay the commission batta as the court did not direct him to pay batta. According to the plaintiff, he is not legally bound to pay the commission

batta as the commissioner was not appointed at his instance. But, it is to be noted that this court appointed Adv. Azhakesan as the commissioner on the application of the plaintiff in I.A. 83/14 and the above appointment was upheld by the Hon'ble High Court of Kerala in OP(C) 1946/2016.

8. This court, as per the order in IA. 83/14 directed the petitioner in IA 83/14 to pay Rs.4,000/- as batta to the commissioner and to produce voucher and also deposit Rs.1000/- as batta to the surveyor. Even then, the petitioner in IA. 83/14 (the plaintiff in OS.13/10) disobeyed the order of this court and neglected the High Court's direction on a contention that since the final decree application is filed by the defendant, the plaintiff is not bound to pay the commission batta. Thus, this court is not in a position to bring a 2<sup>nd</sup> report through Adv. Azhakesan. Hence this court proceeded to adjudicate the final decree application on the basis of the commission report, Mahazar and plan prepared and filed by Adv. Sahadevan Nair which were accepted by the Hon'ble High Court in OP(C) 1946/2016. Therefore this court marked the above commission report, mahazar and sketch as Ext. C1 to C3 respectively to decide the final decree. Thus, final decree can be passed with the available commission report and plan.

9. In the result, F.D.I.A. No. 411/13 is allowed and a final decree is passed on the following lines:-

1. 25 cents of property situated in Sy. No. 585/3 denoted as "A2 A3 A4 A5 A6 A8 A2" along with the building, 3 cents of property situated in Sy. No. 585/1 denoted as "A23 A22 A21 A24" and 2.500 cents of property situated in Sy. No. 585/1 denoted as "A17 A16 A15 A12 A20 A21" in Ext C3 plan are allotted to the defendant towards his 4/6 share.

2. 10 cents of property situated in Sy. No. 585/1 denoted as “A25 A18 A22 A23 A25” and 13.5 cents of property situated in Sy. No. 585/2 and 585/1 denoted as “A19 A14 A15 A16 A17 A18 A19” as shown in Ext.C3 plan are allotted to the plaintiff towards his 2/6 share.
3. 110 Sq. links of property denoted as “A13 A12 A15 A14” shown in Ext. C3 plan is reserved for common pathway.
4. Parties are directed to furnish non-judicial stamp papers of sufficient values for engrossing final decree.
5. Ext.C3 plan shall form part of the final decree.
6. Parties shall bear their respective costs.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court today this the 16<sup>th</sup> day of December 2017.)

Sd/-  
**S.K.ANIL KUMAR,**  
**SUB JUDGE**

**Appendix:Nil**

Typed by: kb  
Compared by:vj

Sd/-  
SUB JUDGE