

IN THE COURT OF THE SUB JUDGE, ALAPPUZHA,

Present: Smt.Manju.V, Sub Judge,

Friday the 30<sup>th</sup> day of July, 2021 /8<sup>th</sup> day of Sravana 1943

F.D.I.A. 411/2013 in O.S.13/2010

(Filed on 05.04.2013)

**Petitioner:**  
Defendant

K.M.Chacko, aged 65 years,  
S/o.Late, Mathew, Kannel kochuparambil,  
Thekkumuri, Edathua Village,  
Alappuzha.

*By Adv.G.Harikumar*

**Respondents:**  
Plaintiffs

1. K. J.George, aged 66 years,(Died)  
S/o Mathew,Kannel kochuparambil,  
Thekkumuri, Edathua Village,  
Alappuzha.

Addl.2. Alphonsamma George @ Leelamma 74 years,  
W/o.Late George, Kannel kochuparambil,  
Thekkumuri,Pandankary.P.O.,  
Edathua Village.

Addl.3. Mariamma George @ Glory 49 years,  
W/o.Kunjumon, Karunakkalchira Veedu,  
Kalathil Palam, Karumady Village.

Addl.4. Mathew K George @ Lijo, 46 years,  
S/o.Late K.J.George,  
Kannel Kochuparambil Veedu,  
Pandankary.P.O., Edathua Village.

Addl.5. Thresiamma George @ Liji, 39 years,  
W/o.Binu George,Karikkampallil Veedu,  
Pacha ,Chekkidikadu.P.O., Edathua Village.

*By Adv.K.S.Hariharaputhran*

*Additional R2 to R5 are impleaded and recorded as Legal representatives of deceased 1<sup>st</sup> Respondent as per order in I.A.04/2021 dated 05.03.2021*

This petition is having been finally heard on 30.07.2021 and the court on same day 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 29.01.2013.

2. The averments in the application are as follows:- The defendant is the petitioner in this (FD)IA. The respondent is the plaintiff. This court passed a preliminary decree in this case on 29.01.2013. 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 plaintiff schedule property. The plaintiff appeared before court and contested the case. This court, as per the request of the defendant appointed Adv.Sahadevan Nair as advocate commissioner to prepare report and plan to effect physical division on the basis of the preliminary decree

dated 29.01.2013. 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 IA.No.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.

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 28.2.17 disposed of 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, the Hon'ble High Court of Kerala, without setting aside the commission report prepared by Adv. Mr. Sahadevan Nair granted an opportunity to parties to measure the properties once again with the help of Adv. Azhakesan.

7. As already stated, this court as per the order in IA.No.83/14 directed to petitioner in the IA to pay Rs.4,000/- as commission batta and to produce voucher and also to deposit Rs.1000/- as batta to the surveyor. As the petitioner in IA No.83/14(plaintiff) was not willing to pay the batta and the court was not in a position to obtain a 2<sup>nd</sup> commission report through Adv.Azhakesan, this court accepted the commission report, mahazar and plan prepared by Adv.Sahadevan Nair and on its basis my learned predecessor in office passed a final decree dated 16.12.2017.

8. Aggrieved by the same the respondent/plaintiff in OS.No.13/10 approached the Hon'ble Addl. District Court-II, Alappuzha and as per judgment dated 24.08.2019 in A.S.No.49/18 the Hon'ble court set aside the final decree dated 16.12.2017 with the direction to give opportunity to the defendant to remit the commission batta and surveyor batta as ordered in I.A.No.83/14 within a time limit to be fixed by this court.

9. In compliance with the order, the defendant paid the commission batta and surveyor batta and Adv.Azhakesan filed commission report with the help of a surveyor and Civil Engineer.

10. Though repeated opportunities were given for filing objection to the commission report and for final hearing, both parties in (FD).A No.411/13 did not turn up. Hence my learned predecessor in office as per order dated 06.03.2020 dismissed the final decree application for default. Thereafter I.A.No.12/20 was filed by the respondent/defendant for setting aside the order dated 06.03.2020 and it was allowed and (FD)I.A No.411/13 was restored to file and was posted for objection to commission report and for

hearing.

11. Thereafter respondent/plaintiff filed I.A.No.1/21 for setting aside the commission report submitted by Adv.Azhakesan. In compliance with the direction of Hon'ble High Court in OP (C) No.1946/16(O) that this court shall adopt one of the commission report and to pass final decree on its basis, the said I.A.No.1/21 was treated as objection to commission report filed by Adv.Azhakesan and posted for hearing along with (FD)I.A No.411/13.

12. Heard both sides and perused the materials on record including the commission report, mahazar and plan filed by Adv.Sahadevan Nair and Adv.Azhakesan. The respondent/plaintiff filed I.A No.83/14 for setting aside the commission report filed by Adv.Sahadevan Nair contending as follows:-

In IA 83/14, the property set apart to the share of the defendant in Sy.No.583/3 is situated on the side of 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 said 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/defendant. In addition to that, 3.5 cents of land in the same survey number valued at Rs.4,000/- per cent which is lying at a lower level than that of 21.5 cents is also set apart to the share of the defendant. The commissioner has shown the value of the property set apart to the share of the plaintiff comprised in Sy.No.585/1 and Sy.No.585/2 at Rs.9,000/- per cent and that the said property having no road frontage will actually fetch only a value of Rs.3,000/- per cent. So the allotment made by the commissioner is without any basis. According to the plaintiff, the commissioner has set apart more property to the defendant than what he is entitled to. Hence it

is prayed that commission report filed by Adv.Sahadevan Nair may be set aside by this court.

13. The respondents/defendants in said IA filed objection contending that there is no mistake in the commissioner's sketch and report and the valuation was properly done.

14. When the matter came up for consideration, my learned predecessor in office examined Adv.Sahadevan Nair as CW1. For the purpose of deciding this (FD)IA.No.411/13 the evidence of Adv.Sahadevan Nair in IA.No.83/14 and the commission report, mahazar and plan submitted by him are again taken into consideration by this court. The commission report, mahazar and plan submitted by Adv.Sahadevan Nair are marked as Ext.C1 series for the purpose of this(FD)IA.

15. The commissioner in IA.No.83/14 has suggested plot denoted as A2, A3, A4, A5, A6, A8, A2 in Ext.C1(c) plan having an extent of 25 cents in Sy.No.585/3 to the share of the defendants in addition to plot A23, A22, A21, A24 having an extent of 3 cents in Sy.No.585/1 and plot A17, A16, A15, A12, A20, A21, A17 having an extent of 2.5 cents in Sy.No.585/1. He has suggested plot A25, A18, A22, A23, A25 having an extent of 10 cents in Sy.No.585/1 and plot A19, A14, A15, A16, A17, A18, A19 having an extent of 13.5 cents comprised in Sy.No.585/1 and Sy.No.585/2 to the share of the plaintiff herein. The main grievance of the plaintiff is that the property proposed to be allotted to the defendant is abutting the Panchayath road and the property proposed to be allotted to the share of the plaintiff has no road access. The Commissioner has valued 21.5 cents in the first plot at Rs.12,000/- per cent and valued 3.5 cents in the same survey number at the rate of

Rs.4,000/- per cent. Whereas the property in which the house proposed to be allotted to the plaintiff is situated is valued at Rs. 9000/-. When examined before the court, the Commissioner admitted that he had not seen any document showing fair value of the property comprised in Sy. No. 585/3. He admitted that that property having road frontage is in Sy. No. 585/3 and he had 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 is situated adjacent to the road. He admitted that the property proposed to be allotted to the plaintiff has no road frontage. The evidence of CW1 shows that the property in Sy.No.585/3 which has road frontage will fetch more value than the property in Sy. No.585/1. Both properties are of different value. Thus, I find that 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/-. The Commissioner valued the property in Sy.No.585/3 and 585/1 without any basis and is not proper. Hence I find that Ext.C1 series cannot be acted upon for passing final decree.

16. The respondent/plaintiff filed IA No.1/20 for setting aside the commission report, plan and mahazar filed by Adv.Azhakesan. As already stated in compliance with the direction of Hon'ble High Court in OP(C)No.1946/16 that this court shall adopt one of the commission report at the time of final decree proceeding and accept either of them for passing final decree, the said IA is treated as objection to the commission report and it was posted for hearing along with (FD)IA 411/13. In IA .No.1/20 the respondent/plaintiff objected the commission report filed by Adv.Azhakesan on the following grounds:-

The commissioner has not partitioned the property on the basis of survey plan. He allotted way to the property of plaintiff (from the northern road) though a stranger's property. The value suggested by the commissioner to the properties suggested to the share of plaintiff and defendant is almost equal, but the property suggested to the share of plaintiff is lying at a lower level with no road frontage. It is contended that the commissioner suggested property having road frontage to the share of defendant and it would fetch a higher value. The valuation of building situated in the properties suggested to the shares of plaintiff and defendant is not proper.

17. For the purpose of deciding the matter in IA No.1/20, the commission report filed by Adv.Azhakesan is marked as Ext.C2(series). The photo copy of survey plan, photo copy of fair value statement, report prepared by Civil Engineer (regarding the valuation of the building situated in the properties suggested to be allotted to the shares of the plaintiff and defendant )and the photo copy of the partition deed No.1402/1954(previous title deed) which are appended to Ext.C2(series) are marked as Ext.C3 to Ext.C6 respectively.

18. I have gone through Ext.C2(series) which are the commission report, mahazar and plan submitted by Adv.Azhakesan. The commissioner suggested 'ABCDEF A' plot in Ext.C2(c) plan having an extent of 19.700 cent with the residential building situated therein comprised in Sy.No.585/1 and Sy.No.585/2 to the share of the plaintiff. Again, GHJBAG plot of extent 8 cent comprised in Sy.No.585/1 and KLMNK plot of extent 24.200 cent with the residential building situated therein comprised in Sy.No.585/3 are suggested to the share of defendants. The commission report shows that the

commissioner ascertained the value of the properties and the building situated therein with the aid of Ext.C4 and Ext.C5 documents. The report of commissioner shows that the property was measured on the basis of Ext.C3 survey plan and Ext.C6 previous title deed of property.(ie. partition deed No,1402/1954). Again the Ext.C2 (c) plan shows that the commissioner suggested pathway to the property of defendant(GHJBAG plot)through the property comprised in Sy.No.585/3 which is suggested to the share of the defendant and not through stranger's property. So, I find that none of the objection raised by the respondent/plaintiff in IA.No.1/20 is not sustainable. Hence Ext.C2 series can be accepted for the purpose of passing final decree.

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

1. The property of extent 1.500 cents in survey No.585/2, 10 cents of property comprised in Sy.No.585/1 and 8.200 cents of property comprised in Sy.No.585/1( total 19.700 cents) denoted as "ABCDEFA" plot in Ext.C2(c) plan with the residential building situated therein are allotted to the plaintiff towards his 2/6 share.
2. The property of extent 8 cents comprised in Sy.No.585/1 (3.24 ares) denoted as GHJBAG plot and 24.200 cents of property(9.79 Ares) with residential building situated therein comprised in Sy.No.585/3 denoted as "KLMNK" plot in Ext.C2(c) plan are allotted to defendant towards his 4/6 share.
3. 4.700 cents of property(1.90 Ares) comprised in Sy.No.585/3 shown in Ext.C2(c) plan is reserved for common pathway.

4. The parties are directed to furnish non-judicial stamp papers of sufficient values for engrossing final decree.
5. 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 30<sup>th</sup> day of July 2021)

Sd/-  
MANJU.V,  
SUB JUDGE

Appendix:

**Court Witness:**

CW1      05.11.2014      Adv.Sahadevan Nair

**Court Exhibits:**

C1(a)	04.01.2014	Commission report prepared by Adv.Sahadevan Nair
C1(b)	04.01.2014	Mahazar prepared by Adv.Sahadevan Nair
C1(c)	04.01.2014	Survey plan prepared by M.N.Gopinatha Kurup (Retired Surveyor)
C2(a)	03.03.2020	Commission report prepared by Adv.K.N.Azhakesan
C2(b)	03.03.2020	Mahazar prepared by Adv.K.N.Azhakesan
C2(c)	03.03.2020	Survey plan prepared by Thilakaraj.K. (Retired Taluk Surveyor)
C3	03.03.2020	Photocopy of Survey Plan
C4	03.03.2020	Photocopy of Fair Value Statement

C5	22.02.2020	Report Prepared by Civil Engineer
C6	–	Photocopy of partition deed No.1402/1954

Sd/-  
SUB JUDGE