

IN THE COURT OF THE PRINCIPAL MUNSIF, CHERTHALA

Present: Smt.Ashadevi V.S., Principal Munsiff

Monday 15th day of January, 2024/ 25th Pousham, 1945

I.A.8/2023 in O.S. No.53/2019

(Filed on 16.11.2023)

Petitioners/Defendants:

1. Mathew @Mathai, S/o. Ouseph @ Outha&Joseph, Ilanjiyil, Ulavaipu muri, Thycattussery village.
2. Martin, S/o. Ouseph, of—do—do--
3. John, S/o. Ouseph, of—do---do----

By Adv.C.N.Ponnappan, Adv.K.K.Mohankumar & Adv.N.Sidharthan

Respondent/Plaintiff:

P.A.Mathew Tharakan, S/o. Abraham Tharakan
Koottungal Parayil,
Anal River Sale, Eroor Muri, Poonithura
Village,Kanayannur Taluk From Koottungal Parayil,
Thycattussery Muri, Thycattussery Village.

By Adv.T.Jayakrishnan, Adv.M.V.Baiju, Adv.Hormis Abraham & Adv.M.Ratheesh

This petition having been finally heard on 15.01.2024 and the court on the same day passed the following:-

ORDER

This petition filed to set aside the commission report and plan.

2. The allegation of the petitioners/defendants was that the Commissioner and Surveyor did not measure the property on the basis of survey plan relied on for measurement. The properties were measured differently from the description contained in the plaint. The plaintiffs are entitled only to property confined in Sy no.171/4. Instead of that the property belongs to the defendant were also measured as plaintiffs property.

3. The respondent filed objection to the petition with following contentions. The defendants/respondents are raising unnecessary contentions. The commissioner and surveyor clearly identified the plaint schedule property.

4. Heard both sides.

5. For the purpose of this IA the commission report and plan marked as Exts. C1 and C1(a)

6. The suit filed for recovery of possession, Mandatory injunction and Permanent prohibitory injunction. The plaint schedule property described as property having one Acre 37 cents in Sy172/16,

174/1A and 174/1B. The Commissioner and Surveyor identified the plaint schedule property in each survey number. The father of the defendants were said to have granted with Kudikidappu in Sy. 172/16. They are also claiming സുപ്രാവകാശം in the entire property of 28 cents. Thus infact the properties are of the plaintiff over which the defendants are claiming right by reason of the rights enjoyed by them. It is quite interesting that the defendants contended that if the surveyor measured the property properly, the commissioner could have confined the boundary within Sy.No.174 and that the plaintiff has right only over the property in Sy.No.174. The plaintiff claimed right on the basis of his title deeds and the Surveyor cannot limit the extent of his property to a particular survey alone by measurement . On a perusal of Ext.C1 and C1(a) it could be found that all the necessary facts present at the place was reported by the commissioner. The plaint schedule property property were clearly located. The right of the defendants over the property north to the road in plaint schedule property is a matter to be proved in evidence. It cannot be found on mere assertions. The boundaries separations in Sy No.174 and 172 was clearly identified by the commissioner and surveyor. There is no

error in the measurement from the plan submitted for measurement. Only a minor variation in the measurement occurred as it is quite natural when a measurement is conducted at the place such minor variations may happened. Thus there exists no ground to set aside the commission report and plan.

In the result IA dismissed. No costs.

Sd/-
ASHADEVI. V.S
PRINCIPAL MUNSIFF

Appendix:

Court Exhibits:-

C1	16.10.2023	Commission report prepared by Adv.Martin Antony
C1(a)	-	Plan prepared by G.Soman , Rtd Surveyor

Id/-
PRINCIPAL MUNSIFF