

IN THE COURT OF THE MUNSIF, PERUMBAVOOR

Present:- Smt. Alshari A., Civil Judge (Junior Division)

Wednesday, the 22nd day of January, 2025 / 2nd Magha, 1946.

I.A. No. 3/2024
in
O.S. No. 163/2001

Petitioners/Plaintiffs:-

Nandakumar Kartha, aged 69 years, S/o. Vasudevapanickar,
Mummanottumadathil House, Kummanodu Kara,
Pattimattom Village, Kunnathunadu Taluk.

By Advs. Balachandran, K.N. Madhavapai & Laiji Jacob

Respondents/ Defendants:-

1. Maniyan, aged 54 years, S/o. Velayudhan Kunji,
Mummanottumadathil House, Kummanodu Kara,
Pattimattom Village, Kunnathunadu Taluk.
2. Jayan, aged 56 years, S/o. Velayudhan Kunji,
Mummanottumadathil House, Kummanodu Kara,
Pattimattom Village, Kunnathunadu Taluk.
3. Omanakunjumma, aged 69 years, D/o. Velayudhan Kunji,
Mummanottumadathil House, Kummanodu Kara,
Pattimattom Village, Kunnathunadu Taluk.

By Adv. M.K. Jayapalan.

This petition having been finally heard before me on 22.1.2025 and the court on the same day delivered the following:-

O R D E R

1. Petition averments in brief:- The suit is one filed for perpetual injunction and other reliefs. Commission report and survey plan submitted by the

Advocate commissioner on 25.06.24, cannot be admitted in evidence. It was not prepared in par with the directions of the Hon'ble High Court, as per its remand order. Plaint B schedule way is not completely shown in old survey or resurvey plan. It was not measured as per Ext. A1 partition deed. Commissioner had not measured the property with an extent of 1 acre 18 cents, left remaining after the alienation of property, having an extent of 1.82 cents comprised in old survey No. 475/2. The way with a width of 4 meters referred to in the partition deed was not measured or shown in the plan. Western boundary of the property comprised in old survey No. 475/3 is not correct. It is not possible to discern, on what ground does the plot No. G and A2 is shown to be in the possession of the defendants. The boundary kayyala was seen to be demolished by the commissioner. Thereafter, also, it is reported to be in the possession of the defendants, which is against the true facts. The B schedule way now shown is contrary to the earlier report and in a new alignment.

2. Plot No. 1 to 5, 6, 7, 8 shown in resurvey plan was not measured or noted the extent by the commissioner or the surveyor. In both the plans, a portion of plaint B schedule property alone is shown. Plot No. H shown to be comprised in old survey No. 475/13 is against the true facts. On contrary to the same, B schedule way portion is shown to be comprised in resurvey No. 437/1, 7. The way comprised in old survey No. 475/3 which is lying towards the property comprised in survey No. 475/13 referred to in the document bearing No. 2311/1950, was not measured or identified. Plaint B schedule way was also not identified. Therefore, this commission report cannot be admitted in evidence and has to be remitted back to obtain a report rectifying the mistake. Hence, the petition.
3. The respondents had filed counter statement by denying the petition averments. Petition is not maintainable either in law or on facts. There

is absolutely no necessity to remit back the commission report. Plan was submitted by measuring the plaint schedule properties, on the basis of old survey plan, resurvey plan and the document bearing No. 2311/1950 by complying the directions of the Hon'ble High Court. The matters which are required for the adjudication of the suit was noted and reported by the Advocate commissioner. This is a petition intended to drag the matter. B schedule way is shown in old survey plan No. 1. The entire properties covered by the partition deed in the year of 1950 is measured and shown in the plan. The way with a width of 4 meters referred to in the partition deed is further proceeding to their property and it is not lying demarcated in place. There is no connection to the dispute in matter in controversy. Plot No. G and A2 is clearly shown in the old survey plan. Plot No. 1 to 5, 6, 7, 8 were measured and shown in the plan. Plot No. H is the property comprised in old survey No. 413. Plaint B schedule way referred to in the document bearing No. 2311/1950 is shown in the plan and there is no necessity to remit back the commission report as prayed for. Hence, the petition is to be dismissed.

4. Heard both sides.
5. The suit is one filed for perpetual injunction restraining the defendants from entering forcefully into the plaint schedule property or make destruction to the same or destroy the boundaries or form any new way through the plaint schedule property or do any act detrimental to the rights of the plaintiff over the plaint schedule property. Item No.1 of the plaint schedule is a purayidam and plaint B schedule of the way comprised in old survey No. 475/2 as per the plaint schedule. On going through the plaint averments, it can be seen that, plaint A and B schedule properties belonged to the plaintiff, by virtue of document bearing No. 1195/2000. Though, the way was stipulated in the document, it was not being used as the petitioners were away from the

place. So, as per the case of the plaintiff, they are claiming absolute right over the plaint A schedule property and plaint B schedule way, by virtue of document bearing No. 1195/2000. On going through the document bearing No. 1195/2000, it can be seen that, the property covered by the document bearing No. 5830/95 was partitioned as per the document bearing No. 1195/2000. Plaintiff is claiming right over the property on the strength of 1195/2000. On going through the document bearing No. 5830/95, it can be seen that, the property covered by the said document was originally belonged to their predecessor Vasudevapanicker, by virtue of document bearing No. 2113/1950. On going through the document bearing No. 2113/1950, it can be seen that, A schedule to the said document was set apart to the said share of Vasudevapanicker. As per the recitals in the document bearing No. 2113/1950, no way is stipulated to the A schedule to the said partition deed bearing No. 2113/1950. At the same time, the southern boundary of the A schedule is an edavazhy. The A schedule to the document bearing No. 2113/1950 was subsequently partitioned as per the document bearing No. 5830/95 and the document bearing No. 1195/2000. So, the crucial question to be decided is whether the plaint B schedule way is included in the property shown as A schedule to the document bearing No.2113/1950 or not.

6. On going through the commission report, it is not possible to discern, whether the disputed way is included in the A schedule to the document bearing No. 2113/1950 or not. Commissioner had reported that, the way which is described in the document bearing No. 1195/2000 is not available in place and therefore, it is not shown in the plan. The direction to the Advocate commissioner was to identify the way which is referred to in the document bearing No. 1195/2000. As per the case of the plaintiff himself, the way is not available as it was not being used. Plaint B schedule is the way, which is recited in the document bearing No. 1195/2000. Whereas, the plaint B schedule is noted to be comprised

in survey No. 437/1 and 437/7. As per the document bearing No. 1195/2000, the way is described in E schedule. The way reaches at the item No.1 and then further proceeds to item No. 2 of the A schedule to the partition deed. On going through the commission report, it is not possible to see the way described in E schedule to the document bearing No. 1195/2000 to be identified. Even if, the way is not in place, the commissioner is duty bound to plot the way, as described in the document.

7. The surveyor was examined as PW4 in the suit, after the remand and the filing of the present commission report, he had deposed that, plaint B schedule way was not identified. The way which is shown in the plan ends at the property of the defendants. Plaint B schedule way is not shown in the plan as per the evidence of the surveyor. As per the evidence of surveyor and on going through the commission report and the survey plan, it can be seen that, the way which leads to the property of the defendants alone was identified and plaint B schedule way which is described in E schedule to the partition deed bearing No. 1195/2000 is not identified. So, the Advocate commissioner has to identify the A schedule to the document bearing No. 2113/1950, then the property set apart to the share of the plaintiff by virtue of document bearing No. 1195/2000 and also, the Advocate commissioner is duty bound to demarcate the way which is described and shown in E schedule to the document bearing No. 1195/2000. The matter in controversy is pertaining to the plaint B schedule and as the way is not identified as described in the document bearing No. 1195/2000, the commission report is not sufficient enough to adjudicate the matter in controversy. Therefore, it is necessary to remit back the commission report so as to ensure a fair adjudication of the suit. Adv. A.R. Bejoy is hereby appointed to note the factors required to be noted by the petitioner and the respondents. Taluk surveyor is hereby appointed as per OM of Hon'ble High Court of Kerala to assist the Advocate commissioner. Issue

intimation to Survey Superintendent. Rs. 4,500/- is to be deposited towards the remuneration of the Advocate commissioner and Rs. 2,500/- is to be deposited towards the remuneration of the surveyor appointed. Advocate Commissioner is directed to complete the work and file commission report within one month as the matter is in the year of 2001. For commission report.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 22nd day of January, 2025.

Sd/-
ALSHARI A.,
Civil Judge (Junior Division)

APPENDIX
NIL

Id/-
Civil Judge (Junior Division)
(By Order)

// True Copy //

Sd/-
Junior Superintendent.

jpp/-
Compd.by : spk.

Order in
I.A. No. 3/2024 in
O.S. No. 163/2001
Dated : 22.1.2025