

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Tuesday, the 10th day of January, 2023/ 20th Pousha, 1944

IA No. 04/2022

in

OS. 208/2012

Petitioner/ Plaintiff:-

George, Aged 64 years, S/o. Isahaq, Kollaramaly House, Vengola Kara, Vengola Village.

By Adv. T R Ramanadhan

Respondents/ Defendants:-

- 1 Varghese (Died), S/o. Isahaq, Kollaramaly House, Vengola Kara, Vengola Village.
2. Sucey Varghese, Aged 72 years, W/o. Varghese, Kollaramaly House, Vengola Kara, Vengola Village.
3. Vinod Varghese Issac, Aged 43 years, S/o. Varghese, Kollaramaly House, Vengola Kara, Vengola Village.
4. Vijay Varghese, Aged 40 years, S/o. Varghese, Kollaramaly House, Vengola Kara, Vengola Village.

By Adv. T V Eldho

This petition having been finally heard on 3/1/2023 and the court on 10/01/2023 passed the following:-

ORDER

1. Petition averments in brief:- Advocate commissioner and surveyor was examined for marking the plan and report. It was reported that the plaint B schedule property was not identifiable. The property identified as plot No. 4, 5 and 6 is to be joined to cover the property as per the document of the defendant

as per the report. The document bearing No. 218/82 and 219/82 was referred to for measuring the properties. The basic documents were 5002/1119 and 7991/1116. Defendant is not entitled to get any property having an extent of 1 acre 60 cents which belong to the plaintiff. The plan shown by noting overlapping is baseless. The boundary demarcating the property of the plaintiff and defendant is noted in cyan colour and the property which is included in the cyan colour is covered by the document of the defendant as reported is not helpful to decide the case. By measuring the property on the basis of prior documents bearing No. 5002/1119 and 799/1116, the eastern boundary could be clearly identified. The property which belonged to the defendant by virtue of document bearing No. 218/82 which is covered by the document bearing No. 5002/1119 as such the property belonged to the plaintiff by virtue of document bearing No. 219/82 is covered by the partition deed bearing No. 799/1116. So, the prior document by which the property was vested with the plaintiff and defendant are different. The property which is deficient in the defendant's property is lying on the eastern side which was not measured. So, it is necessary to remit back the commission report so as to have a fair adjudication. Hence, the petition.

2. The respondent had filed counter statement by stating that the petition is not maintainable. The suit is posted for final hearing after closing the evidence. As per order in I.A 2193/12 the commission report was filed thereafter on the basis of the order in I.A 909 /14 it was remitted back. Subsequently, the commission report is filed. Plaint D schedule is the property shown as the property alleged to be encroached by the defendant. The commissioner had reported that there is no encroachment. The plaintiff have no case that the report submitted by the commissioner and surveyor is wrong. There is no such suggestion during the examination of commissioner or surveyor. From the chief examination of CW1 it

can be seen that the survey plan was not disputed by the plaintiff. The old survey boundaries or stones are not available in the place as per the evidence of Advocate commissioner and surveyor. There is no bonafides for the petition. Hence, the petition is to be dismissed.

3. Heard both sides.
4. On going through the commission report marked as Ext. C2 and C2(a) in the suit, it can be seen that the property was measured on the basis of document bearing No. 218/82, 219/82, 3338/11. As per the commission report, it is stated that the plaint B schedule property was not identifiable as per resurvey or as per boundaries. As per the report, the eastern boundary of the plaint A schedule property covered by the document bearing No. 219/82 was noted in cyan colour. The other boundaries as per old survey as noted in green colour. Plaint B schedule property was not identifiable. The eastern boundary of plaint A schedule property as per the resurvey number is shown in magenta colour. As per the old survey the eastern boundary is shown in cyan colour. As per the report the eastern boundary of the property belonged to the plaintiff comprised in survey No. 308/pt and 308/10 is noted with cyan colour, other lines are shown in green colour. The western boundary of the property belonged to the defendant by virtue of document bearing No. 218/82 is noted in cyan colour and other boundaries are shown in green colour. Western boundary of the property belonged to the defendant as per resurvey shown in orange colour and the other boundaries are shown in black colour. The boundaries of the property alienated to one Sreenivasan was also noted in red and black colour. So, from the commission report it can be seen that the boundary lines in between the property of the plaintiff and the defendant is noted to be the cyan colour. It is also reported that it is noted as per the old survey. In the footnote attached to the plan, it is stated that

plot No. 1 is included in plaint A schedule property as per resurvey and it is in the possession of the plaintiff. Item No. 2 and 3 is noted to be included as plaint A schedule, but it is noted to be covered by the document belonged to the defendant bearing No. 218/92 and one Sreenivasan as per the document bearing No. 3338/11. Plot No. 2 and 3 is noted to be inside the plaint A schedule property which is noted on the western side of the cyan coloured line. Plot No. 5 and 6 is also shown inside the cyan coloured line. At the same time, it is reported that plot No. 2, 3, 4 is in the possession of the plaintiff but it is to be added to the defendant's property so as to obtain the extent as per the defendant's document bearing No. 218/82. Plot No. 4 is noted to be in the possession of Sreenivasan and his wife, Hema which is included in plaint A schedule property and covered by document bearing No. 3338/11. So, as per the commission report though the boundary line in between the plaintiff and defendant is noted in cyan line, the properties which is noted as plot No. 2, 3, 5 which is lying on the western side of the cyan line and noted to be included in plaint A schedule is stated to be covered by the document of the defendant bearing No. 218/82. At the same time it is reported that plaint A schedule property covered by the document bearing No. 219/82 includes the plot No. 1 to 6. So, the property which is noted to be in the possession of the plaintiff and to be covered by the document of the plaintiff is also reported to be covered by the defendant as per the commission report. Moreover, the commissioner during his evidence had stated that, no old survey stones were identified. The boundary line was fixed as per old survey but it is not discernible how the old boundary lines were fixed on going through the commission report. According to the petitioner, the overlapping of the property can be cleared by identifying the properties on the basis of prior documents. It is true that this is a highly belated petition after closing the evidence and when the

case was posted for final hearing. At the same time, being a suit for fixation of boundary, it is the duty of the court to get a report which is clear for identifying the properties. On going through the commission report and while referring to the footnote attached to the plan, there are some overlapping noted. So, in such a scenario, it is necessary and inevitable to remit back the commission report. At the same time, the inconvenience caused to the defendant in filing such a highly belated petition even though the commission report was filed as early on 21.05.2015. To have a fair adjudication, it is necessary to adjudicate the properties on the basis of title deeds of the plaintiff and defendant and on the basis of prior documents and on the basis of old and resurvey records. On going through the commission report, the plot No. 2, 3, 5 belonged to the plaintiff as well as the defendant by virtue of their title deeds. So, it is not helpful to have a fair adjudication in the suit. In the said scenario, this petition is to be allowed by remitting back the commission report on terms, by directing the petitioner to pay costs of Rs. 3,000/- to the respondent.

5. In the result, the petition stands allowed.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 10th day of January, 2023.

Sd/-
ALSHARI A.
MUNSIFF

Appendix - Nil

Id/-
Munsiff
(By Order)

// True copy //

Junior Superintendent

Typed by: jav
Compd.by :

Copy of Order
in
IA No. 04/2022
in OS 208/12
Dated : 10/01/2023