

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Friday, the 13th day of October, 2023/ 21st Aswina, 1945

I.A. No.274/2019

in

O. S. No. 308/2012

Petitioner/Defendant No.10:-

Sivasankarapilla, Aged 82 years, S/o. Shambhu Embranthiri,
Satheesh Mandiram, Thaikkadu Kara, Pattimatoom Village.

By Adv. M Rajendran

Respondents/ Plaintiff/Defendants 1 to 9:-

1. Lali Kunjumon, W/o. Kunjumon, Thottunkal House,
Morakkala Kara, Kunnathunadu Village.
2. Sadanandan, S/o. Sankarapilla, Akkattukuruvichalil House,
Thaikkadu Kara, Pattimattom Village.
3. Sajeevan, S/o. Sankarapilla, Akkattukuruvichalil House,
Thaikkadu Kara, Pattimattom Village.
4. Raveendran, Aged 57 years, S/o. Sankarapilla, Akkattukuruvichalil
House, Thaikkadu Kara, Pattimattom Village.
5. Vishnu Sadanandan, S/o. Sadanandan, Akkattukuruvichalil
House, Thaikkadu Kara, Pattimattom Village.
6. Vani Sadanandan, D/o. Sadanandan, Akkattukuruvichalil
House, Thaikkadu Kara, Pattimattom Village.
7. Indira Sajeevan, W/o. Sajeevan, Akkattukuruvichalil House,
Thaikkadu Kara, Pattimattom Village.
8. Aswathi Sajeevan, D/o. Sajeevan, Akkattukuruvichalil House,
Thaikkadu Kara, Pattimattom Village.
9. Aravind Sajeevan, S/o. Sajeevan, Akkattukuruvichalil House,
Thaikkadu Kara, Pattimattom Village.

R1 - By Adv. K Balachandran

R2, R3, R5 to R9 - By Adv. T P Issac

R4 - Party in person

This petition having been finally heard on 08/09/2022 and the court on 23/09/2023 delivered the following:-

ORDER

1. The petition averments in brief:- The commission report and plan submitted by the Advocate commissioner is wrong and baseless. It was so filed on the influence of the defendants 2 to 5. The instructions of the Hon'ble court was not complied by the Advocate commissioner or by the surveyor. The facts which is necessary to have a fair adjudication was suppressed on the influence of the defendants 2 to 4. As the documents were not available, the commissioner was not able to file the report with in the time stipulated by the court as stated is not correct. All the documents required to identify the property comprised in old survey No. 182/2 and 179/1, covered by the document bearing No. 46/52, by excluding the lost area, was furnished to the commissioner. Acquisition plan was also furnished to the commissioner. As per the direction of the court, the resurvey sketch produced by 3rd defendant, was also considered as stated, is not correct. As the acquisition plan was not available, the southern boundary of the property, comprised in old survey No. 180/2 was not clearly identified as stated, is baseless. The property covered by the document bearing No. 436/1952, was not identified by the commissioner, or the surveyor, that is why, the property comprised in each survey number is not identified and the property lost was also not mentioned in the report. The property which is lying on the western side of the property, that comprised in survey No. 179/1 that includes the way with an extent of 85 cents, is identified and shown in the plan. The way place with an

extent of 16 cents is shown as excess land. As per the old survey or old survey, there is no excess land in disputed property. As per the report dated 4.06.2015, the way which is lying demarcated is not shown in the plan, the subject matter of the suit is the way. The way covered by the document bearing No.436/1952 and the document bearing No. 873/1997 was shown to be excess land, which is recited to be way in the documents. The survey number of the excess land, so reported is not shown and also, the said excess land is separately shown in the plan. The said property which is lying as a way is wilfully suppressed in the report. The way is not included in the G schedule, to the document. If the way is excluded, there is no property which is lying as a excess land. The commissioner did not comply the order of this court, dated 16.02.2016. The properties scheduled as A to G in the document bearing No. 436/1952 was not identified, as per the order of the court. Also, the properties covered by the documents bearing No. 873/1997, 1002/1997, 4216/2006, 2495/2016, were not identified or located. The earlier commission report was already remitted back, the answers to the questions 3, 5 and 6 were already noted in the earlier plan as stated is a mockery to the court order. The instructions 3, 4, 5, and 6 earlier reported cannot be relied on. Moreover, this defendant was not noted to be having any property comprised in survey No. 179/1, as per the earlier report. As per the earlier report, the property which is shown to be in the possession of the defendants, is having 33 sq.metres and it is shown to be having 1.37 Ares, in the present report. Also, the G schedule including the excess land, is shown to be having different extent in both the reports. The questions in the work memo, preferred

by the defendant is not answered by the Commissioner. The way which is recited in the document bearing No. 873/1997 is not separately shown in the report. The way which is kept in common, as per the document bearing No. 436/1952, was not identified by the Commissioner or shown in the plan. The plan submitted as per the old survey is not tallying with old survey plan. The side measurements are varying, the lie of the land also is different. Therefore, it is not possible to see that the property was identified on the basis of old survey. The Commissioner had not complied the order of this court. Hence, the commission report is to be set aside. Hence, the petition.

2. The first respondent had filed counter statement by denying the petition averments. The document bearing No. 873/1997, is pertaining to the property, which does not belong to the Saraswathy Amma. The defendants 1 to 5 would not get any right over the property, which is wrongly shown in the resurvey. The property of the 1 to 5 defendants, were not properly identified by the Commissioner and the surveyor. The way referred to in the document bearing No. 873/1997 was also not taken into account by the Commissioner or the surveyor. The disputed way is not included in the property covered by the document bearing No. 873/97. The directions of the court was not complied by the Commissioner or the surveyor. The property having an extent of 1 acre and 85 cents shown, is contrary to the order of this court. As per the order in I.A 1859/2015, there was a direction to identify the properties covered by the documents bearing No. 873/1997, 1002/1997, 4216/2006, 2495/2016, which were not complied by the commissioner or the surveyor. There was a direction to submit a separate plan, based

on resurvey, which also is not complied with. A composite plan was also directed to be produced which also is not complied by the Commissioner or the surveyor. The physical boundaries were also not noted as per the order of this court. The work memo preferred by the 10th defendant was also not taken into consideration, by the Commissioner. The dispute in the suit itself is that the way is not included the document bearing No. 873/1997. There is no excess land, as per the old survey or resurvey. There is difference in the extent of the property that belong to the defendants. The way which is already reported is not shown in this plan or report. The disputed way is not included in the G schedule. The Commissioner or the surveyor had not complied the order of this court. Hence, the petition is to be decided accordingly.

3. The points that arise for consideration are:-

1. Is the commission report liable to be set aside or remitted back as prayed for?
2. Reliefs and costs?

4. **Point Nos. 1 and 2:-** The commissioner who had submitted the report and plan was examiner PW 2. He identified the commission report and plan marked as Ext. C1 and C1(a). He deposed that, the property which was acquired for the Periyar Vally canal was not identified, as he was not supplied with the acquisition plan. According to him, an application preferred under the Right to Information Act was shown by the 1st defendant. During the inspection, by which it is understood that the plan was not available. He had stated that, the way is not noted on the

western side of the property, shown as plot No. 3. The way shown through the western side of the plot No. 2 and 7, which is same as the boundary of the plot No. 3. According to PW2, as per the document bearing No. 436/1952, there is reference to excess land, but it is not stated, on which portion, does this excess land situates in. He had also deposed that, it is not possible to see the lie of plot No. 3 as per Ext. C1(a). According to him, the way which is noted in Ext.C2(a) is not the portion of property, shown as excess land, in Ext. C1(a). PW2 had deposed that, as per the order in I.A 1859/15, there was direction to note 9 factors, out of which, the third one is not noted in Ext. C1(a) plan, that is the plan which is required to be remitted herein. According to PW2, it was already reported in Ext. C2, C2(a) and therefore, it was not so reported in Ext. C1(a) plan. On going through the order of this court, it can be seen that the earlier plan was remitted back and specific directions were given, to locate the properties, as per the document bearing No. 873/1997, 1002/1997, 4216/2006, 2495/2016 etc. The earlier commission report which is marked as Ext. C2, C2(a) herein, was remitted back as per the order in 1859/2015 by which the Commissioner were directed to locate the properties as per the properties covered by the documents, as per the documents as direction No. 3. So, when there is specific direction as per the order, on remitting the earlier Commission report, definitely, it is the duty of the commissioner to note the factors which is required to be done as per the order remitting the commission report, which is marked as Ext. C2 and C2(a). While there is specific directions, there is no point in saying that, it was already reported in the earlier report, which was already

remitted back. So, the direction specified in the order in I.A 1859/15 has to be complied with, which is not done by the commissioner, as per his evidence itself. It is also very clear that if the earlier report pertaining to those points, which is directed to be noted as No.3 was sufficient, there is no occasion or purpose, for the court to order the same to be located in the order, while remitting the earlier commission report.

5. From the evidence of PW2 it is clear that, the direction No. 5, 6 was also not complied with. It is also clear that during the evidence of PW2, an acquisition plan was shown which according to PW2, was not available during the time of inspection of the property. He is not able to depose, whether the disputed way would lie beyond the property covered by the document bearing No. 873/1997 or not, which is the matter to be adjudicated herein. The commissioner is referring to the earlier report which is marked as Ext. C2(a) which was already remitted back. From the evidence of PW2 it is very clear that, he is referring to the earlier commission report which is already remitted back as per the order in I.A 1859/15 with specific directions. So, from the Ext. C1, C1(a) and from the evidence of PW2 itself, it is very clear that the directions of the court, as per the order in 1859/15 was not complied, by the commissioner as per Ext. C1, C1(a). As per the evidence of PW1, that is the surveyor who assisted the commissioner, it can be seen that, the way which is noted as plot No. 8 in the earlier plan is not noted in the Ext. C1(a) plan. According to PW1, the way which is referred in the document bearing No. 873/97 was referred to, in the earlier plan. He had also deposed that, the property shown as plot No.3 in Ext. C1,

C1(a) is shown as the plot No. 2 to 7 and 9 in the earlier plan. He had admitted that, there is difference in the plots identified as per Ext. C2, C2(a) and C1, C1(a). It is also stated that, the physical boundaries are not shown in Ext. C1(a) plan. The property was not measured on the basis of the document bearing No. 1008/1997, 4216/06, 2495/16 for the purpose of Ext. C1(a). According to PW1, the excess land which is referred to in the document bearing No.873/1997 could not be identified. From the evidence of PW1, it can be seen that the properties were not identified on the basis of physical boundaries, which was also required to be noted as per the order in I.A 1859/15. He had categorically depose that the way is lying well demarcated in the place. On going through Ext. C1, C1(a), it can be seen that, the way is not shown in the Ext. C1(a) plan, which the PW1 had categorically deposed to be in existence in the plan. From the evidence of PW1 and 2 and on verifying Ext. C1 and C1(a), it can be clearly seen that the directions of the court as per the order in I.A 1859/15 was not complied with. So, it is necessary to remit back the commission report, so as to comply the order of this court in I.A 1859/15 by which the directions were clearly enumerated to locate and identify the properties. As per the evidence of PW1, and 2, the acquisition plan was not available when the property was measured. But, during the evidence to PW1 the same was shown and he had deposed clearly that it was not available during the inspection of the property. So, as the property is to be identified on the basis of acquisition plan also, the commission report is to be remitted back. So, in view of the above discussions, I am of view that this petition is to

be allowed by remitting back the commission report with a direction to the commissioner and the surveyor to comply the directions of this court in IA 1859/15 and to note the particulars which are directed to be noted, as per the order in I.A 1859/15. It is needless to say that, the respondents are at liberty to prefer any work memo. The commissioner and the surveyor shall take the work memo into consideration while inspecting the property. Adv. K.C Muraleedharan is hereby appointed as the Advocate commissioner to comply the directions of the court in order in IA 1859/2015, with the assistance of Taluk Surveyor, is hereby appointed as per the OM of the Hon'ble High Court of Kerala. The petitioner is directed to remit Rs. 4,000/- towards the remuneration of the Advocate commissioner and Rs. 2,500/- towards the remuneration of the surveyor hereby appointed. Issue intimation to the Survey Superintendent.

6. 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 13th day of October, 2023.

Sd/-
ALSHARI A.
MUNSIFF

Appendix:-Nil

Id/-
Munsiff
(By Order)
Sd/-

// True copy //

Junior Superintendent

Typed by: jav
Compd.by :Maya

Copy of Order
in
IA 274/19 in O.S. No. 308/2012
Dated : 13/10/2023