

IN THE COURT OF THE MUNSIFF, KATTAPPANA

PRESENT: FELIX JOHN, CIVIL JUDGE (JUNIOR DIVISION)

Friday the 26th day of July, 2024 / 4th day of Sravana , 1946

IA 02/2022 IN OS 80/2015

<u>Petitioner</u> Plaintiff	:	Balan, S/o Raman, Kayaplackal House, Kattappana Kara, Kattappana Village.
		By Adv: K.Baiju
<u>Respondents</u> Defendants	1	Santhamma, W/o Late: Divakaran, Pulickamattathil House, Kattappana Kara, Kattappana Village.
	2	Santhosh, S/o Late: Divakaran, Pulickamattathil House, Kattappana Kara, Kattappana Village.
	3	Seema, D/o Late: Divakaran, Pulickamattathil House, Kattappana Kara, Kattappana Village.
	4	Ajesh, S/o Late: Divakaran, Pulickamattathil House, Kattappana Kara, Kattappana Village.
		By Adv: Jiby Sebastian

This petition is filed Under Order XXVI Rule 10 and 12 (2) R/w Section 151 of the Civil Procedure Code and coming before me for hearing on 26.07.2024 in the presence of the above counsel and the Court on the same day passed the following :

ORDER

Suomotu advanced. This is a petition filed to remit back the Commission Report.

2. The 2nd Additional plaintiff was examined as PW1. The Advocate Commissioner was examined as PW2. Exhibits A1 to A4, C1, C1(a), C2 and C2 (a) were marked.

3. Heard the plaintiff.

4. The plaintiff wants to remit back the Commission Report filed in the case. Exhibits A1 to A3 are certified copy of Sale Deed Nos.203/76, 418/79 and 1285/87. Exhibit A4 in the Thandaper account issued from Village Office, Kattappana. Exhibit A5 is the rough sketch C1 and C1(a) are the Commission Report and Plan. Exhibits C2 and C2(a)) are Local inspection report and Rough sketch.

5. As per order in IA 445/2018, the court had directed to survey and demarcate an extent of 1.68 Ares of land conveyed to plaintiff as per Exhibits A1 to A3, PWD sketch and LA sketch.

6. The suit is for recovery of possession of property allegedly encroached by the defendants. Defendants are set exparte in the suit. PW2, Commissioner has deposed that the Commission Report was prepared based on the Re-survey plan. Further the boundaries in Exhibits A1 to A3 are not tallying. Since LA plan was not available, the property was measured basing the Re-survey plan. PW2 on cross examination deposed that the Re-survey plan is not filed along with Exhibit C1 and C1(a). As per Exhibit C1, it is reported that 75 sq.links of property of the plaintiff is in possession of the defendants. But it also reported that the defendants is only holding additional 14 sq.links. In Exhibit C1(a), plan, Taluk Surveyor has reported that sketch of LA.703/67 was not available.

7. It is to be noted that direction was to survey the plaint schedule property based on the title deeds, LA plan and PWD sketch. If the LA plan was not available, the Advocate Commissioner ought to have filed a report and further steps can be taken. The suit is for recovery of possession of the plaint schedule property. Exhibit C1(a) itself reveals that there is encroachment of the property of the plaintiff. Hence, the Commission Report and plan is remitted back to the Advocate Commissioner to measure the property as directed in IA 445/2018, ie.measure the 1.68 ares of land as per the title deeds, LA sketch and PWD sketch.

8. Pay Commission batta of Rs.3500/- and Survey batta of Rs.3000/-. Since this is a Special Tarjet case. Carry out the work in 3 weeks. Pay batta. Call on 29.07.2024.

Pronounced by me in open Court on this the 26th day of July, 2024.

**FELIX JOHN,
CIVIL JUDGE (JUNIOR DIVISION),
KATTAPPANA**

APPENDIX

<u>Petitioner's Exhibits :</u>		
A1	28.02.1976	Certified copy of sale deed No.203/1976 of SRO Peerumade
A2	21.02.1976	Certified copy of sale deed No.418/1979 of SRO Kattappana.
A3	27.04.1987	Certified copy of sale deed No.1295/1987 of SRO Kattappana.
A4	29.01.2015	Thandaper Kanakku issued by Village office Kattappana
A5	-	Rough sketch
<u>Respondent's Exhibits :</u>		NIL
<u>Court Exhibits :</u>		
C1,C1(a)	29.08.2022	Survey Commission report filed by Adv.Byju Abraham
C2,C2(a)	08.04.2015	Commission report and Rough sketch filed by Adv.Byju Abraham
<u>Petitioner's Witnesses :</u>		
PW1	06.07.2024	Bindu K.B
PW2	11.07.2024	Adv:Baiju Abraham
<u>Respondent's Witnesses :</u>		NIL
<u>Court Witnesses :</u>		NIL

CIVIL JUDGE (JUNIOR DIVISION)

Typed by : Lekha T.S.
Compd. By : Syam M.S.

FAIR ORDER IN IA 02/2022 IN
OS 80/2015
DATED: 26.07.2024.