

IN THE COURT OF THE MUNSIF, KARUNAGAPPALLY.  
Present:- Sri.Praveen Kumar.G, BA.L, LL.B, Munsiff.  
Friday, the 06<sup>th</sup> day of November, 2020/the 15<sup>th</sup> day of Karthika,1942.

I.A No.01/2020 in O.S.No.26/2013

Between

Petitioners/Plaintiffs:- 1. Isaac Baby, Kannimel vilayil,  
Koivila vadakkekara muri,  
Thevalakkara village  
2. Barthaloma, of -do-

By Adv. Sri.Jayaprakash and  
Adv.Smt.R.Maya

And

Respondents/  
Defendants: 1. Justin, Kannimel vilayil, Koivila,  
Vadakkekara muri, Thevalakkara village  
(Died)  
2. Mable Justin, of -do-  
3. Ushakumari, All saints vieu  
(Kochoottil thekkathil), Koivila,  
Koivila.PO, Thevalakkara  
4. Ajeesha Justin, Minor,  
aged 15 years,D/o.Justin,  
Kannimel vilayil, Koivila,  
Vadakkekara muri, Thevalakkara village  
5. Aneesha Justin, Minor,  
aged 12 years,D/o.Justin,  
Kannimel vilayil, Koivila,  
Vadakkekara muri, Thevalakkara village

6. Arppino Justin, Minor,  
aged 7 years, D/o. Justin,  
Kannimel vilayil, Koivila,  
Vadakkekara muri, Thevalakkara village

By Adv.N.V.Ayyappan pillai

This petition is filed for appointing commissioner and surveyor U/o.26 Rule 9 of CPC.

This petition is coming on for final hearing before me on 28.10.2020 and on 06.11.2020 the court passed the following.

**ORDER**

Application filed by the plaintiffs for issuance of a survey commission under Order XXVI Rule 9 C.P.C. Parties are referred to as the plaintiffs and the defendants, as they appear in the suit.

2. Plaintiff's case is thus. The suit is for fixation of the boundaries of the plaint A and B schedules with the property on its northern side owned by the first defendant and also for partition and separate possession of the B schedule as such. The plaintiff's property have been wrongly subdivided as per the resurvey and consequently, the defendants claimed right over it. Therefore, the plaint schedule property is have to be measured out for a just decision of the case and for this, an Advocate Commissioner and Taluk Surveyor be appointed.

3. On behalf of the defendants, the second defendant filed a statement of objections contending thus. The properties have already

been measured out by an advocate commissioner and report filed. The plaintiffs filed I.A.No.704/16 to set it aside. As part of the inquiry, the surveyor who measured the property was examined. He deposed that, in addition to the plan submitted, another plan was entrusted to the advocate commissioner. Accordingly, I.A.704/16 was disposed off by this court directing the advocate commissioner to submit the second plan within 7 days. The first report has not been set aside and therefore, the present application is not maintainable.

4. Heard both sides.

5. The suit, as it stands now, is for a declaration of the plaintiffs' title to the plaint A schedule, besides fixation of the common boundaries on its northern side and also for partition of the B schedule. The defendants in this case have raised a counterclaim for a declaration that the house in the B schedule is exclusively owned by him and for fixation of the written statement schedule (northern side) properties' southern boundary and consequential injunction. It seems that the plaintiffs have initially filed I.A.1613/14 for issuance of a like survey commission, without mentioning as to how the properties should be measured. Significantly, the defendants too filed I.A.2232/14 for measuring the property, on the basis of the resurvey. Both the applications were

allowed by a common order on 16-12-2014, which resulted in a commissioner's report and plan filed before the court on 22-01-16. The plaintiffs thereafter filed I.A.704/16 seeking to set aside the commissioner's report. As part of the enquiry thereof, the surveyor was examined as PW1 and on 29-07-2019, this court remitted the commissioner's report with a direction to produce the second plan, as deposed to by PW1, within 7 days. It was subsequently that the present I.A. 1/2020 has been filed by the plaintiffs. In the inquiry in I.A. 706/14, the advocate commissioner was not examined. But, consequent to the direction dated 29-07-2019, a notice was issued to the advocate commissioner to submit the plan stated by PW1. The commissioner submitted that he is not in possession of any such plan. At the request of either side, therefore, the commissioner was examined in court. He deposed as well, that no such plan was entrusted to him by the surveyor nor has he given any direction to measure out the property in such a way. Be that as it may, the present request is again to measure the property on the basis of the title deed. Learned counsel for the plaintiffs, notwithstanding this, submitted that the property be measured exclusively on the basis of the resurvey. If so, one must note that such a measurement has already been done and plan submitted, it has become

part of the record. The request to set it aside has been impliedly turned down by this court, specifically observing that the identification and the measurement of the properties made thereunder is in the most practical and proper manner. If so, as things stand now, nothing new can be introduced with the appointment of another survey commission. Therefore, the application is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 6<sup>th</sup> day of November, 2020.

Sd/-  
Praven Kumar.G,  
Munsiff.

Appendix:- Nil.

Id/-  
Munsiff.

//True Copy//

MUNSIFF

Copied by : Jyothilekshmy.R

Compared by :