

**IN THE COURT OF THE MUNSIF, KANJIRAPPALLY.**

Present : Smt. Sherin K. George, Munsiff

Tuesday 23<sup>rd</sup> May 2023  
02<sup>nd</sup> Jayshta 1945

**I.A 3/2022 in O.S 280/2012**

**Petitioners/Plaintiffs:-**

- 1) Latha Radhakrishnan, Aged 52 Years,  
W/o Radhakrishnan, Thuthiyil House,  
Edakadathy P.O., Ummikkuppa Bhagam,  
Erumely South Kara, Erumely South Village,
- 2) Thejas Krishna, S/o Latha Radhakrishnan,  
Thuthiyil House, Edakadathy P.O.,  
Ummikkuppa Bhagam, Erumely South Kara,  
Erumely South Village.
- 3) Sruthy Krishna, D/o Latha Radhakrishnan,  
Thuthiyil House, Edakadathy P.O.,  
Ummikkuppa Bhagam, Erumely South Kara,  
Erumely South Village.

By Adv. Darly M. Sebastian &  
Adv. Thomas Kurian.

**Respondents/defendants:-**

- 1) Bissi Joseph, W/o Joseph, Pallivathukkal  
House, Mukkuttuthara P.O., Kunnammuriyil,  
Kollamula Village.
- 2) Jacob, S/o Kurian, Pallivathukkal House,  
Mukkuttuthara P.O., Kunnammuriyil,  
Kollamula Village.
- 3) Jose, S/o Kurian, Pallivathukkal House,  
Edakadathy P.O., Ummikkuppa Bhagam,  
Erumely South Village.
- 4) Omana, W/o Jose, Pallivathukkal House,  
Edakadathy P.O., Ummikkuppa Bhagam,  
Erumely South Village.
- 5) Tintu, D/o Jose, Pallivathukkal House,  
Edakadathy P.O., Ummikkuppa Bhagam,  
Erumely South Village.

- 6) Ponni, D/o Jose, Pallivathukkal House, Edakadathy P.O., Ummikkuppa Bhagam, Erumely South Village.
- 7) KG. Radhamani, W/o Balan, Ottukuzhiyil House, Eruthwapuzha Bhagam, Pampavally North P.O., Erumely South Village.
- 8) Sadanandan, S/o Narayanan, Pottamparambil House, Eruthwapuzha Bhagam, Edakadathy P.O Erumely Kara, Erumely South Village.
- 9) Ponnamma, W/o Sadanandan, Pottamparambil House, Eruthwapuzha Bhagam, Edakadathy P.O Erumely Kara, Erumely South Village.
- 10) Ambily, W/o Sunil, Thuthiyil, Bhavanavilasam House, Mariyappally P.O., Kottayam Village, Kottayam District.

R1 By Adv. George Kurian  
R2 Exparte.  
R3 to R6 No vakalath  
R7 By Adv. V.K. Somasekharan Nair.  
R8 & R9 By Adv. D. Biju  
R10 Exparte.

This petition came up for consideration on 23.05..2023 and the court on the same day passed the following :

### **ORDER**

This is an application filed to return the measured plan and report filed by the Advocate Commissioner which is marked as Ext. C1 series in the application. Of course the present suit which is numbered as O.S 280/12 is filed initially for permanent prohibitory injunction and later by amendment changed to fixation of boundary. Before advertizing further, certain facts are necessarily to be looked into.

Plaintiffs are the legal heir of one Radhakrishnan. The undisputed other facts are that by virtue of sale deed No.1758/2001 Radhakrishnan possessed 5.7 Ares and 5.65 Ares plus 0.84 Ares in 2 survey numbers by virtue of settlement deed No. 1535/2010. Another material on record is the pending of O.S 224/2012, a suit filed by the petitioner/plaintiff herself for Permanent Prohibitory Injunction arguing Village Office Erumely, Tahsildar Kanjirappally, Taluk Surveyor Kanjirappally, District Collector Kottayam and additional D5 as the first defendant in this case from preventing the defendants 1 to 4 mutating any portion of plaintiff schedule property without considering deed No. 1381/2010, 1535/2010 and 1758/01.

Now the core of the dispute in brief:

Petitioner/Plaintiff in both cases alleges that her deceased husband sold 5.65 Ares of property to first defendant named Blessymon out of the total property obtained by him as per deed No. 1758/2001. Before adverting further for a better clarification it is apposite to extract the sequel of transaction with respect to the disputed property and the adjoining properties why because the entire property was once a joint family property. Originally the parents of husband of plaintiff named Radhakrishnan obtained 56.80 Ares of property in resurvey 367/2 in block No. 28 of Erumely South Village by virtue of Land Acquisition 86/95 though not produced at this stage is admitted by both sides that Land Acquisition 86/95 is true. However plaintiff/petitioner has a case that excess extent

was in possession of predecessors but is a matter of evidence.

After the death of mother of deceased Radhakrishnan her legal heirs executed a partition deed as 1741/2001. The parties in said partition deed are Bhaskaran (Father) Radhakrishnan (deceased husband of plaintiff, sisters named Ambily, Usha, Thulasi, I have verified said partition deed which is marked as Ext. A1 in this I.A and found that the description of property will show that out of total extent 56.80 Ares the property are divided into 5 schedules in which A schedule to Bhaskaran. B schedule to husband of plaintiff C schedule to Usha, D schedule to Thulasi and E schedule to Ambily. Out of said E and C schedule it was purchased by husband of plaintiff by virtue of sale deed No. 1757/2001 which is B2 herein, meanwhile I forget to mention the fact that there is a counter claim pending in this suit filed by D1 for rectification of sale deed No. 3160/2010 on the ground that there is a material mistake occurred while executing said sale deed No. 3160/2010.

Now I will proceed for getting better clarification the sequel of transaction after A1 with respect to the entire property. Total extent of original joint family property which subject matter of Ext. A1 = 56.80. After Ext. A1, the respective share holders sold property to Radhakrishnan by virtue of sale deed No. 1757/2001 and by the first plaintiff his wife purchased D schedule in A1 by virtue of deed No. 1381/2010. Also Radhakrishnan acquired an extent of 5.70 Ares out of A schedule in Ext. A1 by virtue of deed No.1758/2001 which is settlement deed.

The remaining extent of A schedule having an extent of 28.40 Ares was transferred by him ( father in law of P1) to his daughter and the said 28.40 Ares was purchased by counter claim 5<sup>th</sup> defendant by virtue of sale deed No. 2892/2005.

- 1) So, first defendant in counter claim obtained property by virtue of 1381/2010 and 1535/2010 (Item No. 1 & 2 in counter claim).
- 2) Plaintiff In the counter claim item No. 3 obtained property by virtue of 3160/2006.
- 3) Fourth defendant in counter claim purchased the part property by virtue of 425/05.
- 4) 5<sup>th</sup> defendant purchased the property by virtue of 2892/2005.

Now the case of the dispute is with regard to the extent of property covered by plaintiff In the counter claim by virtue of deed No. 3160/10 of course for rectification of a deed requires consistent evidence. I have also considered the prayer in the counter claim. Of course proper identification of properties based on all deeds and prior title deed is inevitable to adjudicate the matter. It is also true that twice the commission report was returned. However in the present situation after filing the C1 series defendant also filed application to return Commission Report which is posted along with suit for consideration on submission by the petitioner himself.

Now I shall look into the evidence of PW1 plaintiff surveyor. Even though PW1 deposed that he has identified the properties as per the title deeds. However after an elaborate cross examinations PW1 would admit that in order to measure out the property based on respective title deeds without inspecting the same it cannot be done. Even though the I am aware that the relevancy of the commission report is subject to matter of final adjudication, this is not a fit case to take evidence initially as the counter claim for rectification of sale deed includes changes in the recitals of description. Therefore I am of the view that the commission report can be returned and Advocate Commissioner is directed to file additional plan and report adjudicating the matter sought to be ascertained by both side. Respondent shall have the liberty to file work memo. Petitioner shall pay batta of Rs. 3500/ 2000 to commissioner and surveyor. Issue notice to commissioner. He shall file commission report within 30 days from today. Call on 02/07/2023.

Pronounced in open court on this the 23<sup>rd</sup> day of May, 2023.

**Sd/-**

**Sherin K. George**

**MUNSIFF**

**APPENDIX :-Nil**

**//True Copy//**

**Id/-**

**Munsiff**

Typed By : Sheeba C.N.

Compd. By : Lucykutty Thomas.

**Munsiff**

**COPY OF ORDER in I.A 3/2022 in  
O.S 280/2012 Dated 23.05.2023**