

IN THE COURT OF THE MUNSIF, TIRUR

Present: Smt. SREEJA J., MUNSIF
Friday, the 19th day of January, 2024
the 29th day of Pousha, 1945

E.P. 178/2018 IN O.S. 117/2008

Between:

1. Kalingalakath Kadakassery Kadeja (died),
75 years, D/o. Abdullakutty, Chennara amsom,
Kavancheri desom and post, Tirur Taluk.

* Children: Legal heirs of petitioners

Supplemental:2. Shihabudheen, 50 years,

Supplemental:3. Rahman Firdose, 46 years,

Supplemental:4. Abdulla Kutty, 42 years,

(All are residing at Kallingalath Kadakassery House,
Chennara amsom, Kavancheri desom and post,
Tirur Taluk.)

(Impleaded as per Order in EA – 1/2020 and amended as per
Order in EA 2/2020 dated 10.02.2020)

Petitioner
Judgment debtor

And:

1. Fathima, 60 years,
W/o. Chekkumarakkarakath Muhammed alias Bappu (died)

2. Muneera, 43 years,
D/o. Chekkumarakkarakath Muhammed alias Bappu (died)

3. Febin. C.T, 35 years,
D/o. Chekkumarakkarakath Muhammed alias Bappu (died)

4. Muhammed Fayis, 25 years,
S/o. Chekkumarakkarakath Muhammed alias Bappu (died)

(All are residing at Chennara amsom,
Kavancheri desom and post, Tirur Taluk)

* Children: Legal heirs of Respondents:

Supplemental: 5. Mohinudheen 46 years,

Supplemental: 6. Abdul Vahab, 44 years,

Supplemental: 7. Mahroof Rahman, 33 years,

(Kallingalath Kadakassery House, Chennara amsom,
Kavancheri desom and post, Tirur Taluk)

(Impleaded as per Order in EA – 1/2020 and amended as per
Order in EA 2/2020 dated 10.02.2020)

Respondents
Judgment

This petition coming on this day for hearing before me in the presence of Sri.P.Viswanathan, Advocate for the petitioners and of Sri. K.P. Khaleel Ibrahim Advocate for the respondents and the court passed the following:

ORDER

EP is filed for delivery of property after setting out way shown as ABCD in compromise petition in OS 117/2008.

2. As per the compromise decree, the petitioner have applied for fixing and setting out a way in the plaint schedule property with the assistance of Amin and advocate commissioner along with the surveyor after removing the obstructions. According to the petitioner the advocate commissioner and surveyor fixed the imaginary line upon which the way has to be set out. On the other hand respondent contended that the Amin and the advocate commissioner had not identified the way to be set out as per compromise decree. In order to prove respondents' contention he examined two Amins and Advocate commissioner as PW1 to PW3. On going through the evidence tendered by PW1 to PW3 it is clear that the advocate commissioner has not identified the way to be set out. According to advocate commissioner, he identified the property as per Ext.B1 and B2 which are the commission report and the plan filed in OS 117/08. It is to be noted that the sketch appended along with the compromise decree is not the plan and report filed by advocate commissioner in OS No.117/08.

3.As per Ext.B2 filed by the Advocate Commissioner on 21-5-2008, the respondent has claimed the right of way of the property shown as plot B in the sketch. As per the compromise petition, the western boundary (A B) of plot B claimed by the

petitioner has to be properly measured and it has been determined that the petitioner has the right to walk on the six feet wide road from above boundary to the east and to use the road according to above said width. It was stipulated that the respondent should remove the obstructions and improvements on the above said road and that the western boundary of the above road should be constructed by the petitioner at his own expense. But the petitioner had not set out the way as per the compromise petition. At this juncture this court found that it is not possible to take delivery of the property without identifying the way to be set out. Hence, the petitioner is directed to take steps for setting out the way with help of advocate commissioner and surveyor.

In the result,

The petitioner is directed to take steps.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 19th day of January, 2024).

MUNSIFF.

Appendix:

Petitioner's witness:

- PW1 : Sheeja.
- PW2 : Sreekumar. R.
- PW3 : Asok Kumar. K.P (Advocate).

Petitioner's Exhibits: Nil.

Respondents Exhibits:

- B1. 21-05-2008 : Certified copy of Commission report.
- B2. 21-05-2008 : Sketch.

MUNSIFF.

Typed by :Girija.V.
Compared by: 1) 2)

Fair Order
in EP.178/2018 Dated. 19-01-2024.
