

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SRI.SANTHOSH KUMAR.N, MUNSIFF
TUESDAY 31st MAY 2022/ 10th JYAISHTA, 1944
IA.7/22 IN OS No. 575/2008

Petitioners:-

1. Radha, D/o Karthyayani, Mylakunnil Veedu,
Near Govt.H.S.Kilimanoor, Pazhayakunnummel Village(Died)
2. Sudhambika, D/o Radha, Mylakunnil Veedu,
Near Govt.H.S.Kilimanoor, Pazhayakunnummel Village
3. Sheela, D/o Radha, Mylakunnil Veedu,
Near Govt.H.S.Kilimanoor, Pazhayakunnummel Village
4. Sheeja, D/o Radha, Mylakunnil Veedu,
Near Govt.H.S.Kilimanoor, Pazhayakunnummel Village

By Adv:- Sri.K.S.Vinod

Counter petitioners:-

1. Rugmini, W/o Sudhakaran, Sudhaka Bhavan, Muthala,
Pallikkal Village.
2. Suresh Babu, S/o Sivasankaran, Mylakunnil Veedu,
Near Govt.H.S.Kilimanoor, Pazhayakunnummel Village
3. Smt. Sathyabhama, aged 80 years, Varuthattil Veedu,
Near Madanada Kurakkode, Kizhuvilam Village
(preposed Adl. 3rd defendant)
4. Prasad, S/o Sathyabhama, aged 45 years, Varuthattil Veedu,
Near Madanada Kurakkode, Kizhuvilam Village

By Adv:- Sri.S.Lenin

This petition coming on for hearing on 31.05.2022 and the court on the same day passed the following:

ORDER

The petition is filed u/o 26 Rule 10(3) CPC.

2. The petitioner is the plaintiff in the original suit.

3. The suit is for declaration of title and possession over the plaint B schedule property and for permanent prohibitory injunction.

4. **The petition averments in brief are as follows:** This court vide its order dated 18.02.2020 deputed an advocate commissioner and surveyor to locate plaint B schedule property on the basis of survey records and recitals in the title deeds. Surveyor was examined as DW3. While in cross examination DW3 deposed that the plan prepared by him was not in accordance with the order of the court. The court was unable to pass a decree basing on a wrong report and plan. Hence, Ext.C3 report and C3 series plan are to be remitted back to the commissioner and surveyor for further enquiry. Hence, the application.

5. The 1st respondent/ defendant filed objection refuting all contentions in the petition. The commissioner and surveyor has prepared report and plan in accordance with the orders of the court. The petitioner/ plaintiff has not filed any objection to the report and plan. The petition is intended to protract the matter and hence the petition is liable to be dismissed.

6. As per order 26 Rule 10(3), where the court is for any reason dissatisfied with the proceedings of the commissioner, it may direct such further enquiry to be made as it thinks fit. This court vide its order dated 18.02.2020 appointed Adv.Balachandran and Sri.Sikhamony as commissioner and surveyor respectively to measure out the properties of plaintiffs and defendants in accordance with the specific recitals in the title deeds relied upon by the parties and on the basis of old survey records. The commissioner in the Ext.C3 report has categorically stated that he has relied on old survey sketch, copy of BTR, re-survey plan, settlement deeds 527/1125 and 4697/1104, copy of Will deed

No.51/1989 for preparing the report and plan. He has filed detailed report describing the plaint A and B schedule properties.

7. It is pertinent to note that the petitioner has not filed any objection to the commission report and plan. This petition as disclosed from the averments is based on the deposition of the surveyor that the plan was prepared not in accordance with the order of the court. Mere deposition that the plan was prepared not in accordance with the order of the court is not sufficient ground to remit back the report and plan when the report contains recitals that the old survey sketch, survey plan, revenue records and documents of the parties were relied for preparing the report. Since, the petitioner has not raised any objection in the commission report and plan, it is to presume that there were no error in the proceedings of the commissioner to enable this court to remit the report and plan for a further enquiry. The petitioner had ample opportunity to examine the commissioner to bring out the truth of his report. It is also pertinent to note that the matter is of 2008 and have been dragging for years. Since the report and plan is on the record of this court to decide the mater in question, I am of the view that the contention of the respondent that the petition is only to protract the matter has force. The petitioner can take steps to examine the commissioner touching on his report and plan. Hence, at this point of time there in no need for remitting the commission report and plan.

In the result, the petition is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 31st day of May, 2022.

Sd/-
SANTHOSH KUMAR.N,
MUNSIFF

Appendix:

Nil

Id/-
MUNSIFF

//True Copy//

Typed by: Sheena.K
Compared by:

MUNSIFF