

IN THE COURT OF II ADDITIONAL MUNSIFF, ERNAKULAM

Present :- Maneesha K Bhadran., II Additional Munsiff

Friday, the 17th day of March, 2023/26th Phalgunam, 1944

I.A. No.4/2023 in O.S. No.1035/2016

Petitioners/Defendants:-

1. Mattammel Sree Subramania Swamy Temple, Sree Narayana Seva Sabha, Register No. ER 535/1989, Thevara, Kochi – 682 013 represented by its President, Sri. P.K. Mani, aged 71 years, S/o Krishnan, residing at Payyampillil House, Thevara, Elamkulam Village, Kanayanoor Taluk, Ernakulam.
2. Sri. P.K. Mani, aged 71 years, S/o Krishnan, President, Mattammel Sree Subramania Swamy Temple, Sree Narayana Seva Sabha, Register No. ER 535/1989, Thevara, Kochi – 682 013, residing at Payyampillil House, Thevara, Elamkulam Village, Kanayanoor Taluk, Ernakulam.
3. M.K. Lamlan, aged 65 years, S/o Kittu, Secretary, Mattammel Sree Subramania Swamy Temple, Sree Narayana Seva Sabha, Register No. ER 535/1989, Thevara, Kochi – 682 013, residing at Murikkinampally House, Thevara, Ernakulam Village, Kanayanoor Taluk, Ernakulam.

By Advs. A. Balagopalan, Rajagopalan.A and M.N. Manmadan

Respondents/Plaintiffs:-

1. Valsala Krishnankutty, aged 63 years, W/o Krishnankutty (Late), residing at Mattamel House, Thevara, Elamkulam Village, Kanayanoor Taluk, Ernakulam.
2. Binu, S/o Krishnankutty (late), aged 40 years, residing at Mattamel House, Thevara, Elamkulam Village, Kanayanoor Taluk, Ernakulam.

3. Bindu, D/o Krishnankutty (late), aged 40 years, residing at Mattamel House, Thevara, Elamkulam Village, Kanayanoor Taluk, Ernakulam.

By Adv. S. Sreedev

Petition filed under Order XXVI Rule 9 under The Code of Civil Procedure prayed that this honourable court may be pleased to appoint an advocate commissioner in the above case.

This petition have been come up for hearing before me on 09.03.2023 in the presence of the said counsels and this Court on 17.03.2023 delivered the following:-

ORDER

Petition filed by defendants for appointment of advocate commissioner to measure the width, length and nature of plaint B schedule pathway.

2. Copy of the petition is served on the learned counsel for respondents/plaintiffs. They filed counter affidavit stiffly opposing the above petition. It is contended that the above petition is without any bonafides and is filed to protract the matter.

3. The following point arise for consideration.

- 1) Whether the petition is liable to be allowed?

4. Heard both sides. Perused Records.

5. **The point:-** Suit is one for permanent prohibitory injunction restraining defendants from trespassing into plaint B schedule property and interrupting the usage of plaintiffs. Suit was listed for trial. PW1 was examined and Exts.A1 to A3 were marked.

Petitioners now contend that appointment of an advocate commissioner is necessary to ascertain the current status of plaint B schedule pathway. As per order in IA.5753/2016 advocate commissioner was appointed who inspected plaint schedule property after notice to defendants on 30.07.2016 and filed report of 10.08.2016. The report of the advocate commissioner would show the length, width and nature of plaint schedule pathway. The contention of petitioners that further inspection is required pursuant to the testimony of PW1 cannot be accepted. On perusal of commission report in IA. 5753/2016 it can be noted that the same is prepared duly after notice to both sides. I find no reason to appoint an advocate commissioner for local inspection after the evidence of PW1. Accordingly, I find no merit in the above petition.

In the result, Petition is dismissed. Considering the facts and circumstance of the case, parties are directed to bear their respective costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in the open court on this the 17th day of March, 2023.

Maneesha. K. Bhadran
IInd Additional Munsiff, Ernakulam

Appendix:-

Nil

IInd Additional Munsiff

kap/Comd by.

ORDER

**I.A.No.4 of 2023
in O.S.1035/2016
Dated 17/03/2023**