

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 25TH DAY OF JUNE 2024 / 4TH ASHADHA, 1946

OP(C) NO. 1823 OF 2023

OS NO.271 OF 1989 OF MUNSIF COURT, KAYAMKULAM

PETITIONER/PLAINTIFF:

INDIRAMMA

AGED 58 YEARS

W/O. PURANDHARAN, MUTHIRAKANDATHIL HOUSE,
THOTTATHUM MURI, PATHIYOOR VILLAGE, KAYAMKULAM,
ALAPUZHA DISTRICT, PIN - 690508

BY ADVS.R.REJI

M.V.THAMBAN

THARA THAMBAN

B.BIPIN

ARUN BOSE

RESPONDENTS/DEFENDANTS 1 TO 4:

- *1 PADMANABHA PANICKER PARAMESWARA PANICKER(DIED)
MADATHIL KIZHAKKETHIL, MENAMPALLY MURI, PERINGALA
VILLAGE, BHAGAVATHYPADI, PATHIYOOR P.O., ALAPUZHA
DISTRICT, PIN - 690508 *DELETED
- 2 VIJAYACHANDRABABU
S/O.NANIKUTTY, MADATHIL KIZHAKKETHIL, MENAMPALLY
MURI, PERINGALA VILLAGE, BHAGAVATHYPADI, PATHIYOOR
P.O, ALAPUZHA DISTRICT, PIN - 690508
- *3 NANIKUTTY, W/O.M.S.NARAYANAN, MADATHIL
KIZHAKKETHIL, MENAMPALLY MURI, PERINGOLA VILLAGE,
BHAGAVATHYPADI, PATHIYOOR P.O., ALAPUZHA DISTRICT,
PIN - 690508 * DELETED

O.P.(C).No.1823/2023

-:2:-

***4 BHAGAVATHIPADI N.S.S. KARAYOGAM NO.70
MEENAMPALLY MURI, PERINGALA VILLAGE, REPRESENTED
BY THE KARAYOGAM PRESIDENT, PIN - 689505 *DELETED**

***RESPONDENTS 1,3,4 DELETED**

***RESPONDENTS 1,3 & 4 ARE DELETED FROM THE PARTY
ARRAY AS PER ORDER DATED 25.6.2024IN IA 3/2024 IN
OPC 1823/2023**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
25.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J U D G M E N T

The petitioner is the plaintiff and the respondent is the 2nd defendant in O.S.No.271/1989 on the files of the Munsiff's Court, Kayamkulam (for short 'the trial court').

2. The suit was one for declaration of title, recovery of possession and consequential injunction. The suit was initially dismissed by the trial court. The plaintiff preferred appeal before the Additional District Court, Mavelikkara. The appeal was allowed and the suit was decreed. The plaint schedule property was ordered to be recovered from defendants 1 and 2. The 2nd defendant preferred second appeal before this Court. This Court remanded the matter to the trial court to ascertain the alleged encroached portion on the basis of the final decree. Since the final decree was not found to be passed, the plaintiff preferred a review petition before this Court. As per Ext.P3, the judgment was reviewed by this court and directed the trial court to ascertain the encroachment based on the report and plan of the advocate commissioner. Thereafter, the subject matter of the

dispute were settled between the parties at the mediation. A compromise agreement was entered into between the plaintiff and the 2nd defendant. The plaintiff relinquished the claim against the defendants 1, 3 and 4. Ext.P7 is the compromise agreement. As per the compromise, the plaintiff and the 2nd defendant agreed to measure the plaint schedule property on the basis of the re-survey. On such measurement, if it is found that the 2nd defendant has encroached into the plaint schedule property, the 2nd defendant has agreed to surrender the said portion to the plaintiff. According to the petitioner, the trial court is not prepared to accept the compromise. It is in these circumstances, the plaintiff has approached this Court.

3. I have heard the learned counsel for the petitioner. There is no appearance for the respondent.

4. Ext.P7 would show that the subject matter of the suit has been settled between the plaintiff and the 2nd defendant by a lawful agreement. The plaintiff has also relinquished the claim against the remaining defendants. The compromise of the suit is in tune with Order XXIII Rule 3 of the Code of Civil Procedure. In

view of the settlement arrived at between the parties, this original petition is disposed of with the following directions to the trial court.

(i) The petitioner/plaintiff shall file a commission application to measure the plaint schedule property and to identify the encroachment, if any, in terms of the compromise.

(ii) The trial court shall allow the said commission application.

(iii) The commission batta shall be borne by the plaintiff and the 2nd defendant.

(iv) On receipt of the commissioner's report, the trial court shall dispose of the suit in terms of Ext.P7.

(v) The trial court is directed to dispose of the suit as mentioned above, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

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APPENDIX OF OP(C) 1823/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE JUDGMENT DATED 18.11.1998 OF THE ADDITIONAL DISTRICT JUDGE-I MAVELIKKARA IN A.S.NO.175/1994
Exhibit P2	TRUE COPY OF THE JUDGMENT DATED 10.12.2018 IN S.A.NO.526/1999 PASSED BY THIS HON'BLE COURT
Exhibit P3	TRUE COPY OF THE ORDER DATED 1.8.2019 IN R.P.NO.604/2019 IN S.A.NO.526/1999
Exhibit P4	TRUE COPY OF THE COMMISSION APPLICATION AS I.A.NO. 1/2022 IN O.S.NO.271/1989 ON THE FILES OF MUNSIFF'S COURT KAYAMKULAM
Exhibit P5	TRUE COPY OF THE OBJECTION FILED BY THE 2ND RESPONDENT HEREIN/2ND DEFENDANT IN I.A.NO.1/2022 IN O.S.NO.271/1989 ON THE FILES OF MUNSIFF'S COURT, KAYAMKULAM
Exhibit P6	TRUE COPY OF THE ECOURT STATUS OF THE MUNSIFF'S COURT KAYAMKULAM IN O.S.NO.271/1989 DATED 16.08.2023
Exhibit P7	TRUE COPY OF THE MEDIATION REPORT IN O.S.NO.271 OF 1989 AS PER MEDIATION REPORT BEARING MR.NO.129 OF 2023