

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 31ST DAY OF OCTOBER 2012/9TH KARTHIKA 1934

OP(C) .No. 3030 of 2012 (O)

IN OS.468/2008 of I ADDL.SUB COURT, THRISSUR

PETITIONER(S) :

BHAVYANATH, AGED 26 YEARS
S/O.GOPINATHAN VADASSERY HOUSE, THRIPRAYAR DESOM
NATTIKA VILLAGE, THRIPRAYAR P.O., 680567
CHAVAKKAD TALUK, TRICHUR DISTRICT.

BY ADVS.SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN
SRI.P.T.GIRIJAN
SMT.USHA NARAYANAN

RESPONDENT(S) :

BALAN
S/O.VELAPPAN, KUTTIKATTU HOUSE
THANNIYAM VILLAGE AND DESOM, PERINGOTTUKARA P.O.
680565, THRISSUR TALUK AND DISTRICT.

RR BY ADV. SRI.T.M.CHANDRAN
RR BY ADV. SRI.P.R.NEELAKANDAN NAMBOODIRI

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-10-2012, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 3030 of 2012 (O)

APPENDIX

PETITIONER(S) EXHIBITS:

EXHIBIT P1: THE TRUE COPY OF I.A.NO.3920/2012 IN O.S.468/2008 FOR
APPOINTMENT OF AN ADVOCATE COMMISSIONER.

EXHIBIT P2: THE TRUE COPY OF OBJECTION FILED BY RESPONDENT.

EXHIBIT P3: COPY OF ORDER PASSED BY SUB COURT, TRICHUR IN
I.A.NO.3920/2012 IN O.S.468/2008.

RESPONDENTS' EXHIBITS:

NIL

//TRUE COPY//

P.A. TO JUDGE

ds

V.CHITAMBARESH,J.

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O.P.(C) No.3030 of 2012

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Dated this the 31st day of October, 2012

J U D G M E N T

The suit is one for specific performance of an agreement for sale dated 25-4-2007. The sale consideration agreed upon is at the rate of Rs.34,000/- (Rupees thirty four thousand only) per cent. Therefore the total sale consideration is dependant upon the total extent of land.

2. The defendant who has executed the agreement in favour of the plaintiff derived title under Document No.1405/1975, SRO Anthikkad. The petitioner/plaintiff has a case that the defendant has possession only over 70.95 cents. The fact remains that the property has to be identified with reference to the document of title.

3. An Advocate Commissioner to measure the extent of the property available over which the defendant has title and possession is essential. This is particularly so when the sale consideration is dependant on the extent as aforesaid. But then there is already a report of the Advocate Commissioner

appointed pursuant to the order in I.A No.2759/2008. Therefore the remedy, if any, of the petitioner is to seek for remitting the report of the Advocate Commissioner .

4. I permit the petitioner to apply for remitting the report of the Advocate Commissioner already filed. This is subject to the condition that the petitioner pays a sum of Rs.15,000/-(Rupees fifteen thousand only) as costs to the Counsel for the respondent in this original petition. The costs shall be paid within a period of three weeks from today failing which the impugned order will remain intact.

5. The court below shall remit the report of the Advocate Commissioner for the purpose of measuring the extent of the property available on hand . The application to remit the report shall be filed within a period of one month from today. Such application shall be disposed of within a period of a month thereafter. The court below shall make every endeavour to dispose of the suit itself within a period of three months.

6. The report need be remitted only if the petitioner pays the costs as fixed above to compensate for the delay in taking steps.

The Original Petition is disposed of as above.

