

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE B.KEMAL PASHA**

**FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937**

**OP(C).No. 606 of 2015 (O)**  
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**I.A.NO.19/2015 IN O.S.NO.49/2012 OF SUB COURT, KARUNAGAPPALLY**  
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**PETITIONER(S):**  
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- 1. ABDUL SHIHAB, AGED 52 YEARS,  
S/O.POOKUNJU LABBA, RESIDING AT VELIYIL VEEDU,  
KOLOTHU MURI, PANMANA VILLAGE, KARUNAGAPPALLY, KOLLAM,  
WARD NO.VI HOUSE NO.696, PANMANA GRAMA PANCHAYAT.**
- 2. SAMMERA, AGED 27 YEARS,  
D/O.ABDUL RAHUMAN, RESIDING AT VELIYIL VEEDU, KOLOTHU MURI,  
PANMANA VILLAGE, KARUNAGAPPALLY, KOLLAM,  
WARD NO.VI, HOUSE NO.696, PANMANA GRAMA PANCHAYAT.**

**BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)  
ADVS.SRI.A.JANI(KOLLAM)  
SRI.P.PRIJITH  
SRI.THOMAS P.KURUVILLA  
SRI.P.MARTIN JOSE**

**RESPONDENT(S) :**  
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- 1. ISMAIL KUNJU, AGED 65 YEARS,  
S/O.ALIKUNJU, RESIDING AT KIZHAVARATHU VEEDU,  
PANMANA, CHAVARA, KARUNAGAPPALLY, KOLLAM,  
WARD NO.VI, HOUSE NO.695, PANMANA GRAMA PANCHAYAT,  
PIN- 691 583**
- 2. MYMOONA, W/O. ISMAIL KUNJU, , AGED 57 YEARS,  
RESIDING AT KIZHAVARATHU VEEDU, PANMANA, CHAVARA,  
KARUNAGAPPALLY, KOLLAM, WARD NO.VI, HOUSE NO.695,  
PANMANA GRAMA PANCHAYATH, PIN- 691 583.**

**BY ADVS. SRI.S.SHARAN  
SRI.A.D.SHAJAN**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 29-05-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

**OP(C).No. 606 of 2015 (O)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT P1: TRUE COPY OF PLAINT IN O.S.NO.49 OF 2012 PENDING BEFORE  
THE SUB COURT, KARUNAGAPPALLY**

**EXHIBIT P2: TRUE COPY OF AMENDED WRITTEN STATEMENT IN  
O.S. NO.49/2012 BEFORE THE SUB COURT, KARUNAGAPPALLY.**

**EXHIBIT P3: TRUE COPY OF I.A.NO.19/2012 IN O.S.NO.49/2012 FILED BEFORE  
THE SUB COURT, KARUNAGAPPALLY.**

**EXHIBIT P4: TRUE COPY OF ORDER IN I.A.NO.19/2015 IN O.S.NO.49/2012  
DATED 04.02.2015.**

**RESPONDENT(S)' EXHIBITS**  
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**NIL**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd. \

**B.KEMAL PASHA, J.**

.....  
O.P.(C) No.606 of 2015  
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Dated this the 29<sup>th</sup> day of May, 2015

**J U D G M E N T**

The petitioner is the plaintiff in O.S.No.49/2012 of the Subordinate Judge's Court, Karunagappally, which is one for declaration of his easement right by way of prescriptive easement over the pathway. There was a CMA from an interlocutory order passed in the suit. Against the judgment in CMA, OP(C) 1171/2012 was filed before this Court. This Court while disposing of the original petition, directed the court below to dispose of the suit within six months.

2. The petitioner has applied before the court below for appointment of a Commissioner with the assistance of a surveyor for preparing a report and survey plan in respect of

the plaint schedule properties through I.A.No.19/2015. It seems that the court below has taken a view that as the suit is not one for fixation of boundary and as it is one for prescriptive right of easement, "there is no reason to order survey measurement on the ground that there is no demarcation between plaint A and B schedule properties." The entire reasonings adopted by the court below is illegal and the said order is liable to be set aside.

In the result, this Original Petition is allowed and Ext.P4 order is set aside. Ext.P3 IA stands allowed. The court below shall appoint a Commissioner with the assistance of the Surveyor within 15 days from the date of receipt of a copy of this judgment. The respondents also can file a work memo before the said Commissioner for getting matters of their choice noted down and reported. The petitioner shall pay the required Commissioner's batta, as may be ordered by the court below, in time. On obtaining the Commissioner's report and plan, the court below shall

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dispose of the suit within four months from the date of receipt of the Commissioner's report and plan.

**Sd/- B.KEMAL PASHA, JUDGE**

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[True copy]

P.S. to Judge