

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SATHISH NINAN

THURSDAY, THE 28TH DAY OF FEBRUARY 2019/9TH PHALGUNA, 1940

O.P.(C)No.595 of 2019

(AGAINST THE ORDER DATED 11-01-2019 IN
I.A.No.1664/2018 IN I.A.No.1698/2010 IN
O.S.No.368/2010 OF MUNSIF COURT, ALUVA)

PETITIONERS/PETITIONERS/DEFENDANTS:

1 A.P.ALIAS, AGED 57 YEARS,
 S/O POULOSE, ARRECKAL HOUSE,
 MEKKAD DESOM, VAPPALASSERRY VILLAGE,
 ALUVA TALUK, PIN 683 572.

2 A.P.JOSE, AGED 67 YEARS,
 S/O POULOSE, AREECKAL HOUSE,
 MEKKAD DESOM, VAPPALASSERRY VILLAGE,
 ALUVA TALUK, PIN 683 572.

BY ADV. SRI.B.JAYASANKER

RESPONDENT/RESPONDENT/PLAINTIFF:

ABRAHAM THARIYAN, AGED 65 YEARS,
S/O LATE A.P.THARIYAM, AREECKAL HOUSE,
MEKKAVU DESOM, VAPPALASSERY KARA,
NEDUMBASSERY VILLAGE, ALUVA TALUK, PIN 683 572.

BY ADVS.
SRI.P.G.SURESH
SMT.ASWATHY KRISHNAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
28.02.2019, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

JUDGMENT

The dismissal of an application seeking to set aside the Commissioner's report and plan is under challenge by the defendants in the suit.

The suit is for fixation of boundary and other reliefs. The petitioner/defendant filed the application as I.A.No.1664/2018 seeking to set aside the Commissioner's report and plan, alleging that the measurement done by the Commissioner is not proper and that the report is not in conformity with the title deed of the parties. The court below as per the impugned order dismissed the application.

Heard both sides.

It appears that there is another Commissioner's report and plan prepared in O.S.No.433/2009, which is relied on by the petitioners/defendants. As to the

acceptability and reliability of the said plan and report and also regarding the correctness or otherwise of the plan and report obtained in the present suit, evidence can be adduced during the course of trial. Based on such evidence, the court below can consider which among the reports is to be accepted and pass appropriate orders. I do not think it necessary to go into the merits of the rival contentions regarding the acceptability or otherwise of the report and plan at this stage. It is made clear that, the court below shall be entitled to consider the question, notwithstanding the order dated 11.1.2019 in I.A.No.1664/2018.

The original petition is disposed of accordingly.

Sd/-

SATHISH NINAN

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	A TRUE COPY OF THE PLAINT IN OS NO 368/2010 ON THE FILES OF MUNSIFF COURT, ALUVA.
EXHIBIT P2	A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS IN OS NO 368/2010 ON THE FILES OF MUNSIFF COURT, ALUVA.
EXHIBIT P3	A TRUE COPY OF THE PLAINT IN OS NO 433/2009 ON THE FILES OF MUNSIFF COURT ALUVA FILED BY THE PETITIONERS.
EXHIBIT P4	A TRUE COPY OF THE REPORT ALONG WITH THE SKETH FILED BY THE ADVOCATE COMMISSIONER IN OS NO 433/2009 ON THE FILES OF THE MUNSIFF COURT, ALUVA.
EXHIBIT P5	A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT HEREIN IN OS 433/2009 ON THE FILES OF MUNSIFF COURT, ALUVA.
EXHIBIT P6	A TRUE COPY OF THE REPORT WITH THE SKETCH PREPARED BY THE ADVOCATE COMMISSIONER IN OS NO 433/2009 ON THE FILES OF MUNSIFF COURT, ALUVA.
EXHIBIT P7	A TRUE COPY OF THE REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER WITH PLAN IN IA NO 1698/2010 IN OS NO 368/2010 ON THE FILES OF THE MUNSIFF COURT ALUVA
EXHIBIT P7 (a)	A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS TO EXHIBIT P7 REPORT
EXHIBIT P8	A TRUE COPY OF IA NO 1664/2018 IN IA 1698/2010 IN OS NO 368/2010 ON THE FILES OF MUNSIFF COURT, ALUVA.
EXHIBIT P9	A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO IA NO 1664/2018 IN IA 1698/2010 IN OS NO 368/2010 ON THE FILES OF MUNSIFFS COURT ALUVA.
EXHIBIT P10	A TRUE COPY OF THE CERTIFIED COPY OF THE LITHO SKETCH PREPARED AFTER THE FORMATION OF RAIL AND RELIED ON BY THE SURVEYOR.
EXHIBIT P11	A TRUE COPY OF THE ORDER PASSED BY THE LEARNED MUNSIFF REJECTING IA NO 1664/2018 IN IA 1698/2010 IN OS NO 368/2010 ON THE FILES OF MUNSIFF COURT, ALUVA.

