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Mathew Vs. Kuruvila

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Court : Kerala

Decided On : May-26-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Mathew

Respondent : Kuruvila

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH MONDAY,THE26H DAY OF MAY20145TH JYAISHTA, 1936 OP(C).No. 3511 of 2013 (O) ---------- O.S NO. 17/2009 OF MUNSIFF COURT, KOLENCHERRRY ---------- PETITIONER: ---------- MATHEW, S/O.KURIAN, VANDANATHIL HOUSE, MANGATTOR KARA, AIKKARANADU NORTH VILLAGE, PIN - 682 311. BY ADV. SRI.DINESH R.SHENOY RESPONDENTS: ---------- 1. KURUVILA, S/O.KURIAN, VANDANATHIL HOUSE, MANGATTOOR KARA, AIKKARANADU NORTH VILLAGE, PIN - 682 311.

2. GEROGE V. KURIAN, S/O.KURIAN, VANDANATHIL HOUSE, MANGATTOOR KARA, AIKKARANADU NORTH VILLAGE, PIN - 682 311. R1 & R2 BY ADVS. SRI.SHEJI P.ABRAHAM SRI.O.K.MURALEEDHARAN THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON2605-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. OP(C).No. 3511 of 2013 (O)

---------- APPENDIX ---------- PETITIONER(S)' EXHIBITS ---------- EXHIBIT P1 : TRUE PHOTOCOPY OF THE PLAINT IN O.S NO.17/2009, MUNSIFF COURT, KOLENCHERRY. EXHIBIT P2 : TRUE PHOTOCOPY OF WRITTEN STATEMENT OF FIRST DEFENDANT DATED0608-2009 IN O.S NO. 17/2009, MUNSIFF COURT, KOLENCHERRY. EXHIBIT P3 : TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED BY THE ADDITIONAL2D DEFENDANT IN O.S NO.17/2009, MUNSIFF COURT, KOLENCHERRY. EXHIBIT P4 : TRUE PHOTOCOPY OF THE PLAINT OS. NO. 3/2010, MUNSIFF COURT, KOLENCHERRY. EXHIBIT P5 : TRUE PHOTOCOPY OF THE WRITTEN STATEMENT DATED1705-2010 FILED BY THE PETITIONER/ 1ST DEFENDANT IN OS. NO. 3/2010, MUNSIFF COURT, KOLENCHERRY. EXHIBIT P6 : TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED BY THE2D DEFENDANT, SMT. V.K.MARY DATED2402-2010 IN OS. NO. 3/2010, MUNSIFF COURT, KOLENCHERRY. EXHIBIT P7 : TRUE PHOTOCOPY OF WORK MEMO DATED ---/5/2010 FILED IN OS. NO. 17/2010, MUNSIFF COURT,KOLENCHERRY. EXHIBIT P8 : TRUE PHOTOCOPY OF REPORT DATED0306-2011 SUBMITTED BY ADVOCATE M.K.VARGHESE IN O.S172009, MUNSIFF COURT, KOLENCHERRY. EXHIBIT P8(A): TRUE PHOTOCOPY OF SURVEY SKETCH DATED2303-2011. EXHIBIT P8(B): TRUE PHOTOCOPY OF SURVEY SKETCH DATED1403-2011. EXHIBIT P8(C): TRUE PHOTOCOPY OF SURVEY SKETCH DATED1103-2011. EXHIBIT P9 : TRUE PHOTOCOPY OF

JUDGMENT

DATED1310-2011 IN O.P.(C) NO. 3272/2011, HIGH COURT OF KERALA. EXHIBIT P10: TRUE PHOTOCOPY OF IA3822011 IN OS172009 MUNSIFF COURT, KOLENCHERRY. EXHIBIT P11: TRUE PHOTOCOPY OF IA4372011 IN OS32010, MUNSIFF'S COURT, KOLENCHERRY. EXHIBIT P12: TRUE PHOTOCOPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE PETITIONER IN OS172009 MUNSIFF COURT,KOLENCHERRY. Msd. OP(C).No. 3511 of 2013 (O) ---------- EXHIBIT P13: TRUE PHOTOCOPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE PETITIONER IN OS32010 MUNSIFF COURT, KOLENCHERRY. EXHIBIT P14: TRUE PHOTOCOPY OF THE IA4182011 DATED0911-2011 IN OS1709

MUNISFF COURT, KOLENCHERRY. EXHIBIT P15: TRUE PHOTOCOPY OF THE OBJECTION DATED0501-2012 FILED IN EXT P14. EXHIBIT P16: TRUE PHOTOCOPY OF THE

ORDER

DATED2806-2013 IN IA4182011 IN OS172009 MUNSIFF COURT, KOLENCHERRY RESPONDENT(S)' EXHIBITS: ---------- NIL //TRUE COPY// P.A.TO JUDGE. Msd. V. CHITAMBARESH, J., ---------- O.P.(C) No. 3511 OF2013---------- Dated this the 26th day of May, 2014

JUDGMENT

The order refusing to set aside the report and plan filed by the Advocate Commissioner in this suit for injunction is impugned. The impugned order is merely procedural and does not affect the right of the parties at present.

2. It is open to the petitioner to adduce evidence at the time of trial in opposition to the report and plan to the Advocate Commissioner. The court below is at liberty to remit the report and plan to the same Advocate Commissioner (after trial) if there is a distant doubt that the same is incomplete in any respect.

3. The order impugned does not suffer from any error of jurisdiction warranting interference in the supervisory jurisdiction. The fact that all the parties to Ext.P16 order have also not been impleaded in this Original Petition is an added reason to dismiss the same. The Original Petition is dismissed subject to the above clarification. Sd/- V. CHITAMBARESH JUDGE sd // True Copy // P.A. To Judge

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