

**Suresh Vs. Rugmini Amma and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/1156784](http://sooperkanoon.com/1156784)

**Court :** Kerala

**Decided On :** Jul-15-2014

**Judge :** Honourable Mr.Justice V.Chitambaresh

**Appellant :** Suresh

**Respondent :** Rugmini Amma and Others

**Judgement :**

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH TUESDAY,THE15H DAY OF JULY201424TH ASHADHA, 1936 OP(C).No. 1456 of 2011 (O) ----- AGAINST THE DATED2701-2011 IN IA NO. 1864/2009 IN OS NO. 220/2007 OF THE MUNSIF COURT, OTTAPALAM PETITIONER(S): ----- SURESH, S/O. LATE KRISHNAN NAIR, PADINHARETHIL HOUSE, MUNDAKKOTTUKURUSSI AMSOM DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT. BY ADV. SRI.P.JAYARAM RESPONDENT(S): ----- 1. RUGMINI AMMA, D/O. LATE PARUKUTTY AMMA KALAMNGODATH PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

2. SIVASANKARAN NAIR, KALAMNGODATH PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

3. NARAYANANKUTTY NAIR, KALAMNGODATH PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

4. SATHYABHAMA @ THANKAM, KALAMNGODATH PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

5. SANKUNNIKUTTY NAIR, KALAMNGODATH PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

6. GOVINDANKUTTY NAIR, KALAMNGODATH PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

7. KAMALA, W/O. KIZHAKKE MARKASSERY SANKARANKUTTY NAIR, P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT. OP(C) NO. 1456/2011 8. SARASWATHY, W/O. KAKKASSERY CHANDRAN NAIR P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

9. UNNIKRISHNAN NAIR, S/O. LATE KRISHNAN NAIR, PADINHARETHIL HOUSE, P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

10. RAJAN, S/O. LATE KRISHNAN NAIR, PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT.

11. HARIDASAN, S/O. LATE KRISHNAN NAIR, PADINHARETHIL HOUSE P.O. MUNDAKKOTTUKURUSSI - 679 122, OTTAPALAM TALUK, PALAKAD DISTRICT. R3 BY ADV. SRI.SANTHEEP ANKARATH R3 BY ADV. SMT.M.SINDHU THANKAM THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C) NO.1456/2011 APPENDIX PETITIONER(S) EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE PLAINT IN OS NO. 220/2007 ON THE FILES OF MUNSIFF COURT, OTTAPALAM EXHIBIT P2 : TRUE COPY OF THE WRITTEN STATEMENT FILED IN OS NO. 220/2007 ON THE FILES OF MUNSIFF COURT, OTTAPALAM EXHIBIT P3 : TRUE COPY OF THE AFFIDAVIT FILED BY PLAINTIFFS IN IA NO. 1864 OF 2009 MUNSIFF COURT, OTTAPALAM EXHIBIT P4 : TRUE COPY OF THE COUNTER STATEMENT SUBMITTED BEFORE MUNSIFF COURT, OTTAPALAM IN IA NO. 1864/2009 EXHIBIT P5 : TRUE COPY OF THE PLAINT IN OS NO. 261/1994 MUNSIFF COURT, OTTAPALAM EXHIBIT P6 : TRUE COPY OF THE REPORT DATED 23.09.1999 SUBMITTED BY COMMISSIONER IN OS NO. 261/1994, MUNSIFF COURT, OTTAPALAM EXHIBIT P7 : TRUE COPY OF THE

#### ORDER

DATED 27.01.2011 IN IA NO. 1864/2009 OF OS NO. 220/2007 MUNSIFF COURT, OTTAPALAM RESPONDENT(S) EXHIBITS : NIL /TRUE COPY/ P.A. TO JUDGE. V. CHITAMBARESH, J ----- OP(C) NO. 1456 OF 2011----- Dated this the 15th day of July, 2014

#### JUDGMENT

The report of the Advocate Commissioner is evidence only in the suit in which it is filed under Order XXVI Rule 10(2) of the Code of Civil Procedure. Therefore the report of the Advocate Commissioner in O.S. No. 261/1994 cannot be marked in O.S. No. 220/2007 without examining the said Advocate Commissioner. It is open to the parties to obtain a fresh report in O.S. No. 220/2007 or to rely upon the earlier report in O.S. No. 261/1994.

2. O.S. No. 261/1994 was one for injunction whereas O.S. No. 220/2007 is one for fixation of boundary. A report of the Advocate Commissioner with reference to the document of title is essential in a suit for fixation of boundary. This is particularly so since the parties are allottees under the same partition deed executed in the year 1966.

3. I do not find any error of jurisdiction in the order impugned warranting interference. I however direct the court of 2 OP(C) No. 1456/2011 the Munsiff of Ottapalam to expedite O.S. No. 220/2007. The court below shall issue instructions

to the Advocate Commissioner to execute the warrant within a time frame. Every endeavour shall be made to dispose of O.S. No. 220/2007 within a period of six months. The Original Petition is dismissed subject to the above reservation. V. CHITAMBARESH JUDGE ncd

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