

C.a.Krishnan, vs Ammini,

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Court : Kerala

Decided On : Jan-06-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/20/2022

Appellant : C.a.Krishnan,

Respondent : Ammini,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
THURSDAY, THE 6TH DAY OF JANUARY 2022 / 16TH POUSHA, 1943
OP(C) NO. 20 OF 2022 AGAINST THE ORDER IN IA 473/2019 IN OS
153/2016 OF PETITIONER/PETITIONER/PLAINTIFF IN THE SUIT:
C.A.KRISHNAN, AGED 55 YEARS BY ADVS. A.T.ANILKUMAR
V.SHYLAJA RESPONDENTS/RESPONDENTS/DEFENDANTS: 1
AMMINI, W/O.KUMARRAN, THENIKULANGARA HOUSE,
ARACKAPPADY KARA, ARACKAPPADY VILLAGE, PERUMBAVOOR,
ERNAKULAM DISTRICT, PIN-683 542. 2 KOCHUKUNJU, THIS OP
(CIVIL) HAVING COME UP FOR ADMISSION ON 06.01.2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.(C)No.20 of 2022 ..2..

A.BADHARUDEEN, J.

O.P.(C)No.20 of 2022 Dated this the 6th day of January, 2022

JUDGMENT

Ext.P4 order passed in I.A.No.473 of 2019 in O.S.No.153 of 2016 on the file of the Munsiff's Court, Perumbavoor is the order under challenge in this original petition. In fact, an application for appointment of a commissioner and surveyor was filed by the petitioner, who is the plaintiff in the suit, for fixation of boundary.

2. Going by the order impugned, it appears

that the learned Munsiff dismissed the petition relying on the decision of this Court reported in [2014 KHC 854], Nandakumara Varma v.Usha Varma stating that the property of the defendants not scheduled in the plaint. O.P.(C)No.20 of 2022 ..3.. The finding of the learned Munsiff could not be faulted at all. However, in a suit for fixation of boundary, it is necessary to address the grievance of the plaintiff by permitting him to amend the plaint and incorporate the schedule of the defendants also. The learned counsel for the petitioner submitted that plaintiff is ready to amend the plaint. In view of the factual scenario, I am inclined to

dispense notice in this matter and set aside the order

impugned with liberty to the petitioner to file amendment application and a fresh commission application after notice to the respondents/defendants also for appointment of a commissioner. Needless to say that the learned Munsiff shall hear and dispose of the petition on merits. Sd/- A.BADHARUDEEN, JUDGE rkj
O.P.(C)No.20 of 2022 ..4.. APPENDIX OF OP(C) 20/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PLAINT IN OS NO.153/2016 ON THE FILE OF MUNSIFF'S PERUMBAAVOOR. Exhibit P2 TRUE COPY OF THE COMMISSION APPLICATION IA 413/19 IN OS 153/2016 Exhibit P3 TRUE COPY OF THE OBJECTION SUBMITTED BY THE RESPONDENTS TO EXHIBIT P2

APPLICATION. Exhibit P4 TRUE COPY OF THE ORDER IN IA NO.473/2019 IN OS NO.153/2016 ON THE FILE OF MUNSIFF'S COURT PERUMBAVOOR DATED 30.10.2021.

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