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**(2025) 01 KL CK 0104**

**High Court Of Kerala**

**Case No:** Original Petition (C) No.146 Of 2025

K.S. Ranjith

APPELLANT

Vs

K.M.S Shahul Hameed

RESPONDENT

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**Date of Decision:** Jan. 20, 2025

**Hon'ble Judges:** P.M. Manoj, J

**Bench:** Single Bench

**Advocate:** George Mathew, Sunil Kumar A.G, Mathew K.T., George K.V., Stephy K Regi,  
Adithya Benzeer, John Zachariah Dominic

**Final Decision:** Disposed Of

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### **Judgement**

P.M. Manoj, J

1. The Original Petition is preferred being aggrieved by non consideration of Application No.54 of 2025 with an urgent application as I.A. No.7 of

2025 filed on 17.01.2025 in O.S. No.203 of 1995 before the Sub Court, Kattappana.

2. It is the case of the petitioners that they are the plaintiffs in O.S. No.203 of 1995 on the files of Subordinate Judge's Court, Kattappana and the

respondents herein are the defendants therein. The suit was preferred for a declaration of title and recovery of possession of scheduled property,

consequential injunction among other incidental reliefs. Later, the suit was decreed in favour of the petitioners. Being aggrieved by that, the

respondents had preferred A.S. No.780 of 1999 before this Court. By Ext.P1 judgment dated 20.12.2023, this Court had set aside the judgment and

decree and remanded the matter back to the trial court with an additional direction to consider the commission report and survey plan which were

made available before this Court and pass fresh judgment and decree within a period of three months from the date on which the certified copy of

judgment is received. There was a further direction in Ext.P1 judgment directing the parties to appear before the trial court on 11.07.2024.

3. However, being aggrieved by the errors crept in the commission report, the petitioners had preferred an application to examine the Advocate

Commissioner and Surveyor as per Ext.P2. However, without considering the facts involved in the issue, the trial court dismissed the application on

17.01.2025. Thereafter, the matter was heard and the case was posted to 21.01.2025 for judgment. In fact, no steps were taken by the respondents. It

was only on 15.01.2025, the documents were submitted by the respondents. Though the petitioners sought time to challenge the order in Ext.P2, that

was not granted. Accordingly, the petitioners had preferred application to obtain certified copy of the order and also filed I.A. No.7 of 2025 on

17.01.2025 itself seeking to issue the copy of the order in Ext.P2 application.

4. Since the matter stands posted to 21.01.2025, the petitioners approached this Court seeking to stay further proceedings in O.S. No.203 of 1995.

Being aggrieved by the non-consideration of I.A. No.7 of 2025 and issuance of copy of the order in Ext.P2, the petitioners seek to issue a direction to

the Subordinate Judge's Court to issue copy of the order dated 17.01.2025 passed in I.A. No.6 of 2025 in O.S. No.203 of 1995 within a stipulated

time.

5. I have heard Sri.George Mathew, the learned counsel for the petitioners and considering the urgency and the balance of convenience, notice to the

respondents stand deferred.

6. Going by the facts involved in this case, it appears that the earlier judgment and decree passed by the Subordinate Judge's Court, Kattappana in

O.S. No.203 of 1995 dated 13.09.1999, in favour of the petitioners, was set aside by this Court in A.S. No.780 of 1999. However, this Court has

appointed an Advocate Commissioner to conduct the survey with the help of Taluk Surveyor and directed the trial court to consider the survey report

submitted by the Advocate Commissioner which is prepared with the help of Taluk Surveyor.

7. The petitioners had approached the trial court for examining the Advocate Commissioner as well as the Taluk Surveyor, since some errors were crept in the survey report. Though this question was raised before this Court, this Court has directed the petitioners to approach the trial court for their grievance. This is the circumstance in which the petitioners had preferred Ext.P2 application. However, the Sub Court, Kattappana without considering the facts involved in the issue has preferred to dismiss the I.A. and the matter stands posted to 21.01.2025 for judgment.

8. On considering the issues involved in this case, it appears that the petitioners are prejudiced by the non-consideration of their application as per Ext.P2 and proceeding further by the trial court to pass judgment without considering the prayer to examine the Advocate Commissioner as well as Taluk Surveyor, as they apprehend that there are certain errors occurred in the commission report.

9. Under such circumstances, there will be a direction to Sub Court, Kattappana to consider and pass appropriate orders on I.A. No.7 of 2025 as expeditiously as possible and also direct the Sub Court, Kattappana to issue certified copy of the order in Ext.P2. Till that time further proceedings in

O.S. No.203 of 1995 stand stayed.

The Original Petition is disposed of as above.