

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

FAO.No. 110 of 2015 ()

IN IA NO.2977/2014 IN O.S.NO.448/2011 OF IV ADDITIONAL
DISTRICT COURT, THRISSUR

APPELLANT(S)/FIRST RESPONDENT:

THANKACHAN,
AGED 57 YEARS, S/O.KURIYAKOSE,
KUDIYIRIKKAL HOUSE, PUTHUR VILLAGE,
KALLAI DESOM, THRISSUR DISTRICT.

BY ADV. SRI.K.A.SATHEESA BABU.

RESPONDENT(S)/PETITIONER AND SECOND RESPONDENT:

1. ELIYAS,
AGED 66 YEARS, S/O.YOYAKI,
VATTEKKAD HOUSE, PUTHUR VILLAGE,
KALLAI DESOM, THRISSUR, PIN 680 001.
2. RAPPAL,
AGED 75 YEARS, S/O.OUSEPH,
ARAKKAL HOUSE, PUTHUR VILLAGE,
KALLAI DESOM, THRISSUR - 680 001.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

P.B.SURESH KUMAR, J.

F.A.O.No.110 of 2015

Dated this the 8th day of June, 2015

JUDGMENT

The order on I.A No.2977 of 2014 in A.S No.448 of 2011 on the file of the IV Additional District Court, Thrissur is under challenge in this appeal.

2. The appellant is the second defendant in O.S No.342 of 2010 on the file of the Munsiff Court, Thrissur. O.S No.342 of 2010 was filed by the first respondent for declaration of easement right over a pathway. The pathway in respect of which the relief was claimed in the suit was described in the plaint as plaint B schedule. The suit was decreed by the trial court holding that the plaintiff has prescribed a right of easement over plaint B schedule pathway. The appellant challenged the decision in A.S. No.448 of 2011. He has also obtained a stay of operation of

the decision of the trial court. In the appeal, the first respondent filed I.A. No.2977 of 2014 stating that during the pendency of the appeal, with a view to defeat the decree passed in his favour, the appellant has planted a few saplings in plaint B schedule property and claiming an order of mandatory injunction directing the appellant to remove the saplings planted in plaint B schedule property. The appellant filed objection to I.A.No.2977 of 2014, contending among others, that no pathway is in existence as shown in plaint B schedule and that he has not planted any saplings in the said property as alleged by the first respondent.

3. There is yet another suit between the parties as O.S.No.4433 of 2011. An Advocate Commissioner was appointed in the said suit and the said Commissioner filed a report, after conducting a local inspection. Initially, based on the report filed by the Advocate Commissioner appointed in O.S.No.4433 of 2011, the appellate court allowed I.A No.2977 of 2014 and an order of mandatory injunction was

passed directing the appellant to remove the saplings from plaint B schedule property. The said order was challenged by the appellant before this Court and as per the judgment in F.A.O.No.275/2014, this Court set aside the said order and remitted I.A. No.2977/2014 to the appellate court for fresh disposal on the ground that the report of the Advocate Commissioner which was relied on to pass the order impugned in the said case was not proved. Pursuant to the said decision, when the matter was taken up for hearing and disposal, the first respondent filed an application to appoint an Advocate Commissioner for local inspection and an Advocate Commissioner was appointed as per order passed on the said application. The said Advocate Commissioner, after conducting a local inspection, submitted Ext.C1 report. In Ext.C1 report, the Advocate Commissioner has stated that saplings are seen planted in the portion of the property described in the plaint as plaint B schedule. On the basis of the said report, the impugned order has been

passed by the appellate court directing the appellant to remove the saplings planted in plaint B schedule property and the obstructions and blocks put up at the entry point along the way in plaint B schedule property, within a week. The appellant is aggrieved by the said decision of the appellate court.

4. Heard the learned Counsel for the appellant and the learned Counsel for the first respondent, plaintiff.

5. The learned Counsel for the appellant contended that there is no pathway in existence as described in plaint B schedule. It was also contended by him that the report of the Advocate Commissioner who was appointed by the appellate court would indicate that there is only natural vegetation in the disputed area and therefore there was no necessity to pass an order in the nature of the impugned order.

6. The question as to whether there exists a pathway as claimed by the plaintiff in the plaint B schedule is a

matter to be decided by the appellate court in the appeal. Going by the findings rendered by the appellate court, it cannot be contended that there is no obstruction for the use of the pathway described in the plaint as plaint B schedule. It is the duty of the appellate court to maintain the status quo as regards the properties during the pendency of the appeal. It is all the more so, when the appellate court has stayed the operation of the decree passed by the trial court. At any rate, in so far as it is found by the appellate court that there is obstruction for the use of the plaint B schedule property as a pathway, there is no illegality or impropriety in directing the appellant to remove the obstruction caused. The appeal is therefore devoid of merits and the same is accordingly dismissed.

However, the appeal in which the impugned order is passed being an appeal filed in the year 2011, I deem it appropriate to direct the appellate court to dispose of the appeal within a period of four months from today and it is

ordered accordingly. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm