

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

FAO.No. 202 of 2015 ()

**(AGAINST ORDER IN I.A.NO.1283/2015 IN A.S.NO.138/2015 OF PRINCIPAL DISTRICT
COURT, KOTTAYAM DATED 22/08/2015)**

APPELLANT(S)/RESPONDENTS/RESPONDENTS:

- 1. SELVARAJ, AGED 56 YEARS,
S/O.MANI, KOLLAPARAMBU HOUSE, KILLIROOR,
THIRUVARPPU, KILLIROOR NORTH P.O.,
KOTTAYAM DISTRICT, PIN - 686 020.**
- 2. SUSHEELA, AGED 50 YEARS,
W/O.SELVARAJ, KOLLAPARAMBU HOUSE, KILLIROOR,
THIRUVARPPU, KILLIROOR NORTH P.O.,
KOTTAYAM DISTRICT, PIN - 686 020.**

**BY ADVS.SRI.B.ASHOK SHENOY
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH
SRI.RIYAL DEVASSY**

RESPONDENT/PETITIONER/APPELLANT:

**P.P.UNNIKRISHNAN NAIR, AGED 59 YEARS,
S/O.PADMANABHA PILLAI, KAIPPALLIMADOM, KILLIROOR,
THIRUVARPPU, KILLIROOR NORTH P.O., KOTTAYAM DISTRICT,
PIN - 686 020.**

**THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

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F.A.O.No.202 of 2015.

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Dated this the 6th day of October, 2015.

J U D G M E N T

Defendants 1 and 2 in a suit for injunction have come up in this appeal challenging an interim order passed by the appellate court in the appeal preferred by the plaintiff against the decree in the suit.

2. The suit was for a decree of prohibitory injunction restraining the defendants from causing obstructions to the user of plaint schedule item No.4 property as a pathway. According to the plaintiff, he is enjoying a right of easement by prescription over plaint schedule item No.4 property. The suit was contested by the defendants contending that the plaintiff has no right over plaint schedule item No.4 property. The trial court accepted the case of the defendants and dismissed the suit. The plaintiff challenged the decision of the trial court in appeal. Along

with the appeal, the plaintiff filed I.A.No.1283 of 2015 seeking an order of temporary injunction restraining the defendants from causing obstructions to the user of plaint schedule item No.4 property as a pathway. When the said interlocutory application came up for orders, it was brought to the notice of the appellate court that a fence has already been erected by defendants 1 and 2 in plaint schedule item No.4 property after the decision impugned in the appeal. Since, there was no obstruction for the user of plaint schedule item No.4 property as a pathway all throughout the suit, the appellate court directed defendants 1 and 2 to remove the fence erected by them in plaint schedule item No.4 property. The said order is under challenge in this appeal.

3. Heard the learned counsel for the appellants.

4. It is beyond dispute that there was no obstruction for the user of plaint schedule item No.4 property as a pathway all throughout the suit. It is after the decision of the trial court, defendants 1 and 2 have erected the fence in plaint schedule item No.4 property and thereby obstructed the use of

the said property as a pathway. It is in the said circumstances, having regard to the pendency of the appeal, the appellate court chose to direct defendants 1 and 2 to remove the fence erected by them so as to restore the status quo as on the date of disposal of the suit. In that view of the matter, I do not find any reason to interfere with the impugned decision. However, in the peculiar facts and circumstances of the case, I deem it appropriate to direct the appellate court to dispose of the appeal on merits, as expeditiously as possible.

In the result, the appeal is disposed of directing the appellate court to dispose of A.S.No.138 of 2015 as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. All the interlocutory applications in the appeal are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.