

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

S.A.No. 596 of 1995 (D)

AGAINST THE JUDGMENT IN AS 95/1981 of ADDITIONAL SUB
COURT, IRINJALAKUDA.
AGAINST THE JUDGMENT IN I.A. 1605/1977 IN OS 839/1965 of
PRINCIPAL MUNSIF COURT, IRINJALAKUDA.

APPELLANT(S/APPELLANT/13TH DEFENDANT:

VARGHESE, S/O. POTTAKKARAN KUNJI PAILOTH,
MELOOR VILLAGE, (DIED)
MUKUNDAPURAM TALUK.

ADDL. A2 TO A6 IMPEADED.

2. ROSY VARGHESE, W/O. VARGHESE,
POTTAXKKARAN, MELOOR VILLAGE,
TRICHUR VILLAGE,
TRICHUR DISTRICT.
3. ANZY JAMES, D/O. VARGHESE,
EDAKULATHOOR HOUSE, VENDOOOR P.O.,
AMBALLOOR.
4. SR. MARY PHILPA, D/O. VARGHESE,
ADORATION MONASTARY,
VISHAKAPATTANAM, ANDRA PRADESH.
5. P.V. PAPPACHAN, S/O. VARGHESE,
POTTAKKARAN, MELOOR VILLAGE,
TRICHUR DISTRICT.
6. LALACHAN VARGEHSE, S/O. VARGHESE,
POTTAKKARAN, MELOOR VILLAGE,
TRICHUR DISTRICT.

THE LRS OF DECEASED SOLE APPELLANT ARE IMPEADED AS
ADDL. APPELLANTS 2 TO 6 AS PER ORDER DATED 7.8.2007 IN
I.A.1098/2007.

BY ADVS.SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)

RESPONDENT(S) /RESPONDENTS/PETITIONER & DEFENDANTS 1 TO 12:

1. KALADY DEVASWOM, MELOOR VILLAGE, (DIED; LRS
MUKUNDAPURAM TALUK, REPRESENTED BY IMPEADED)
JAYANTHAN NAMBOODIRIPAD,
S/O. PADUTHOL MANAKKAL RAVI NAMBOODIRI.
2. KRISHNAN NAMBOODIRIPAD,
S/O. PLANGATTIL PADUTHOL MANAKKAL,
ASHTAMOORTHY NAMBOOTHIRIPAD,
MELOOR VILLAGE, (DIED; LRS IMPEADED)
MUKUNDAPURAM TALUK.
3. DEVASSY, S/O. PALLIPURATHPARAMBIL (DELETED)
THEKKAN LONAPPAN, MELOOR VILLAGE,
MUKUNDAPURAM TALUK.
4. KOCHUTHOMMAN, S/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL, MELOOR VILLAGE,
MUKUNDAPURAM TALUK.
5. KOCHAPPU, S/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.
6. GEORGE, S/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL, MELOOR VILLAGE,
MUKUNDAPURAM TALUK.
7. IPPU, S/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.
8. KURIAN, S/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.
9. THANKAMMA, D/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.
10. ROSSA, D/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.
11. MARIYAM, D/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.
12. THRESSIA, D/O. DEVASSY, (DELETED)
PALLIPURATHPARAMBIL,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.

13. BABY, D/O. POTTAKKARAN, (STRUCK OFF)
KUNJI PAILOTH, MALOOR VILLAGE,
MUKUNDAPURAM TALUK.

ADDL. R14 & R15 IMPEADED.

14. SHRI. BRAMMADATHAN NAMBOODIRIPAD,
S/O. RISHIKESAN NAMBOODIRIPAD, (STRUCK OFF)
PADUTHOL MANA, MELOOR P.O., KALADY.

15. SHRI. KUMARASWAMY NAMBOODIRIPAD,
S/O. NARAYANAN NAMBOODIRIPAD, (STRUCK OFF)
PLANGATTIL PADUTHOL MANA,
MELOOR P.O., KALADY.

THE LRS OF THE DECEASED R1 AND R2 ARE IMPEADED AS
ADDL. R14 & 15 AS PER ORDER DATED 11.6.2010 IN I.A.
1627/2007.

RESPONDENTS 3 TO 12 ARE DELETED FROM THE PARTY
ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED
9.10.2007 IN I.A. 1110/2007.

ADDL.R16 IMPEADED.

16. P.R. SUBRAMANIAN NAMBOODIRI,
S/O. LATE RAVI NAMBOODIRI, PRIEST,
AGED 57, RESIDING AT PADUTHOL MANA,
MELOOR P.O., THRISSUR.

ADDL. 16TH RESPONDENT IMPEADED AS PER ORDER DATED
22.9.2014 IN I.A. 2441/13.

RESPONDENTS 13 TO 15 ARE STRUCK OFF FROM THE PARTY
ARRAY AS PER ORDER DATED 31.7.2015 IN I.A. 1860 OF 2015.

R16 BY ADV. SRI.P.R.VENKETESH

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON
04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P. BHAVADASAN, J.

- - - - -
S.A. No. 596 of 1995

&

I.A. No. 1934 of 2015
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Dated this the 4th day of August, 2015.

JUDGMENT

Fortunately for this Court, the parties have arrived at a compromise and a compromise petition is filed. They pray that a decree may be passed in terms of the compromise and the compromise entered into may form part of the decree.

In the result, the compromise petition is accepted and the same is recorded and a decree is passed in the following terms:

i) The appellants and respondent producing herewith a sketch showing the property of 4th and 5th appellants marked as "A", plaint schedule property marked as "B", existing way through the plaint schedule property marked as "C", pathway to be constructed marked as "D", the one metre width pathway as "E" and the 24 metre length pathway on the south of the plaint schedule property as "F". The approximate measurements of

the pathways to be constructed is also shown in the sketch. It is submitted that the said sketch may be treated as part of this compromise petition.

ii) The property marked as "A" in the sketch now belongs to the 4th and 5th appellants exclusively and other appellants have no right over the said property.

iii) 5th appellant is now abroad in Qatar and will be in station only during October, 2015. He has no objection to this compromise petition and he has authorized the 4th appellant Pappachan, who is his elder brother, to sign this compromise petition on his behalf.

iv) The appellants agree to not to use the existing pathway which runs through the middle of the plaint schedule property and which ends at the eastern boundary of the property of the 4th and 5th appellants and that they have no right to do so, once the alternate pathway is provided as stated below.

v) The respondent representing the Meloor - Kalady Sivakshethra Trust have agreed to provide a pathway starting at the northern end of 24 metre long pathway belonging to

the appellants shown as "F" in the sketch appended hereto and which starts from the Panchayath road on the southern boundary of the plaint schedule property. That way having a width of 3 metres and having an approximate length of 90 metres, starting from the western side of the existing way shall run along the southern boundary of plaint schedule property and then will run along the western boundary of the plaint schedule property till it terminates at the southern boundary of the property of the 4th and 5th appellants, namely, the property marked as 'A' in the sketch appended herewith. The respondents 1 and 2 also agree to provide a width of more than 3 meters to the said pathway wherever it is needed so.

vi) It is agreed by respondent that the said pathway, which will be provided can be used by the appellants as of right and they will be entitled to construct the said pathway using the materials already used for the early pathway, which are lying in the existing pathway.

vii) The appellants agree not to obstruct the use of the new pathway by respondent who may also make use of the 24 metre

length pathway (shown as "F" in the sketch) belonging to the 4th and 5th appellants which starts from the Panchayat Road on the southern side in order to reach the pathway to be constructed.

viii) The appellants agree to provide a pathway having one metre width and approximately 19 metre in length to respondent starting from the southern boundary of their property, where the pathway to be constructed, ends and towards the northern boundary of the property of the 4th and 5th appellants, so that respondent can use that pathway to reach the plaint schedule property on its northern side. The appellants agree that they will not obstruct the use of the pathway by respondent.

ix) It is agreed by respondent that the appellants will be free to take vehicles to the pathway to be constructed through the plaint schedule property to reach the property of 4th and 5th appellants shown as "A" in the sketch. It is agreed by respondent that such right of way as stated above will be available to the appellants, their successors and as well as to the subsequent purchasers of

property of the 4th and 5th appellants.

x) Appellants and respondent agree that the final decree passed in I.A. No. 1605/1977 in O.S. No. 839/1965 on the file of the Munsiff's Court, Irinjalakuda may be modified shifting the existing pathway as aforesaid and granting delivery of the plaint schedule property to the respondent on completion of the construction of the new pathway which shall not be later than two months from the date of passing of the judgment by this Hon'ble court in S.A. 596/1995.

The plan and the compromise petition shall form part of the decree. In case if any problem arises at the execution stage, the execution court shall take appropriate steps in the matter.

sb.

P. BHAVADASAN,
JUDGE