

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C).No. 1674 of 2012 (O)

PETITIONERS:

1. KAMALAKSHI AGED 50 YEARS
AGED 65 YEARS, W/O.RAJAPPAN
CHORACKATTUPARAMBIL HOUSE, KARUVATTA VADAKKUM MURI
KARUVATTA VILLAGE, ALAPPUZHA DISTRICT.
2. RADHAKRISHNAN
AGED 42 YEARS, S/O.RAGHAVAN
CHORACKATTU PARAMBIL HOUSE
KARUVATTA VADAKKUM MURI, KARUVATTA VILLAGE
ALAPPUZHA DISTRICT REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER
MOHINI, AGED 38 YEARS
D/O.KAMALAKSHI, CHORACKATTU PARAMBIL HOUSE, KARUVATTA
VADAKKUM MURI, KARUVATTA
ALAPPUZHA DIST.
3. JANAKI
AGED 72 YEARS, W/O.VASU, CHORACKATTU PARAMBIL HOUSE
KARUVATTA VADAKKUM MURI, KARUVATTA
VILLAGE, ALAPPUZHA DISTRICT.
4. RAJENDRAN
AGED 50 YEARS, S/O.VASU, CHORACKATTU PARAMBIL HOUSE
KARUVATTA VADAKKUM MURI, KARUVATTA
VILLAGE, ALAPPUZHA DISTRICT.
5. MOHINI
AGED 38 YEARS
D/O.KAMALAKSHI, CHORACKATTUPARAMBIL HOUSE
KARUVATTA VADAKKUM MURIKARUVATTA VILLAGE
ALAPPUZHA DISTRICT.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S

RESPONDENTS:

1. CHELLAMMA
AGED 69 YEARS, W/O.KUMARAN
SOODRAPARAMBIL KIZHAKKETHIL, KARUVATTA VADAKKUM MURI,
KARUVATTA VILLAGE, ALAPPUZHA DISTRICT.690101
2. SUJATHA
37 YEARS, W/O.RAJENDRAN, RAHUL BHAVAN
KARUVATTA VADAKKUM MURI, KARUVATTA VILLAGE,

ALAPPUZHA DISTRICT.690101

3. RAJENDRAN
AGED 49 YEARS, S/O.KUMARAN, RAHUL BHAVAN
KARUVATTAVADAKKUM MURI, KARUVATTA VILLAGE
ALAPPUZHA DISTRICT.690107
4. SARASWATHY
AGED 44 YEARS, D/O.CHELLAMMA, NIKATHIL VEEDU
KARUVATTA VADAKKUM MURI, KARUVATTA VILLAGE
ALAPPUZHA DISTRICT.690107

R1-R4 BY ADV. SRI.R.AZAD BABU

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1: TRUE COPY OF THE PLAINT IN O.S.145/2011 ON THE FILE OF THE MUNSIFF'S COURT, HARIPPAD FILED BY THE RESPONDENTS HEREIN.
- EXT.P2: TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA NO.687/2011 IN OS NO.145/2011 ON THE FILE OF THE MUNSIFF'S COURT, HARIPPAD FILED BY THE RESPONDENTS HEREIN.
- EXT.P3: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS 1 TO 4 HEREIN IN EXT.P2 IA.
- EXT P4: TRUE COPY OF PLAINT IN OS NO.173/2011 ON THE FILE OF THE MUNSIFF'S COURT, HARIPAD FILED BY THE PETITIONERS 1 TO 5.
- EXT.P5: TRUE COPY OF THE AFFIDAVIT AND PETITION IN IA NO.865/2011 IN OS NO.173/2011 ON THE FILE OF THE MUNSIFF'S COURT, HARIPAD FILED BY THE PETITIONERS 1 TO 5.
- EXT.P6: TRUE COPY OF THE COMMISSION REPORT, MAHAZAR AND ROUGH SKETCH FILED BY THE ADVOCATE COMMISSION AS PER ORDER IN IA NO. 866/2011 IN O.S.NO.173/2011 OF THE MUNSIFF COURT, HARIPAD.
- EXT.P7: TRUE COPY OF THE COMMON ORDER DATED 10.11.2011 IN IA NO.687/2011 IN OS NO.145/2011 AND IA NO.865/2011 IN O.S.NO.173/2011 OF THE MUNSIFF COURT, HARIPAD.
- EXT.P8: TRUE COPY OF THE PROSECUTION PETITION FILED BY FIRST AND FIFTH PETITIONERS IN O.S.NO.173/2011 OF THE MUNSIFF COURT, HARIPAD.
- EXT.P9: TRUE COPY OF COMMISSION REPORT, MAHAZAR AND ROUGH SKETCH DATED 19.11.2011 OF THE ADVOCATE COMMISSION.
- EXT.P10: TRUE COPY OF IA NO.406/2012 IN OS NO.145/2011 OF THE MUNSIFF COURT, HARIPAD FILED BY THE RESPONDENTS.
- EXT.P11: TRUE COPY OF ORDER DATED 26.03.2012 IN IA NO.406/2012 IN O.S.NO.145/2011 OF THE MUNSIFF COURT, HARIPAD.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A.TO JUDGE

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SUNIL THOMAS, J.

O.P.(C) No. 1674 of 2012

Dated this the 20th day of August, 2015

JUDGMENT

This original petition is filed by the defendants in OS No.145/2011, aggrieved by Ext.P11 order in IA No.406/2012 by which, the court below modified the status quo order and permitted the plaintiff to construct a house in the property. The respondents herein are the plaintiffs in OS No.145/2011, who had filed that suit seeking various reliefs, inter alia, an injunction, restraining the respondents from trespassing into the plaint schedule property. It was admitted in the plaint, that the defendants therein had right of way through 'C' schedule way, having width of three feet. While so, the defendants herein filed OS No.173/2011 before the same court claiming that they have right over the pathway having a width of 2 metres. Commissions were taken out in both the suits. On the basis of the reports, an order of status quo was ordered by Ext.P7 common order in IA No.687/2011 and IA No.865/2011 in both suits. By the above order, the parties

were directed to maintain status quo in relation to the pathway with respect to 1.96 meters at the starting point and 1.84 meters at the end. Thereafter, the petitioners herein filed IA No.406/2012 in OS 145/2011 to modify the above order and to permit them to construct a residence, on the ground that they have been granted benefit under a Panchayath Scheme, which will expire on 31st March. The court below allowed it subject to certain conditions, including retaining of right of way, which has resulted in this original petition.

2. When the matter was taken up for hearing, there was no representation for the petitioner, in spite of the matter being taken up for hearing several times. The learned counsel for the respondent was present and heard. Examined the records.

3. It appears that there were materials to show that the respondents herein (plaintiffs in OS 145/2011) had collected materials for construction of a house. It is also on record that they have availed a loan from the Panchayath under a Beneficial Housing Scheme, which had a rider that the amount should be availed before a particular date. It is seen that the court below on the basis of the materials available before it, had held that the

claim of the defendants therein, that they had right over the 2 meter pathway, was not legally sustainable and the commissioner had found only a beaten track. It was also held by the court below that because of the foot steps at the one terminal of the path way, there was no possibility of vehicular traffic being taken out. Considering these facts, the court below modified the order of injunction. It was held that since vehicular traffic was not possible through the pathway because of the existence of steps, even slight deviation in the pathway was not detrimental to the walking of the respondents through the alleged pathway.

4. Essentially there is a factual foundation on which the court below modified the order. Though the path way, claimed by the defendants, there was no vehicular traffic and was not possible also. They were only entitled for right of way. The plaintiffs had collected materials for the construction of a house. Under the guise of the status quo, if it is stalled, it is likely to result in irreparable injury, which cannot be compensated in terms of money. The court below having regard to the settled principles of injunction, has correctly and legally modified the

order permitting the plaintiffs to complete the building and subject to a rider that they shall file an affidavit undertaking that the construction will be subject to the result of the suit. The court has taken into consideration, the interest of the defendants also.

5. In the light of the above, I find no illegality or irregularity, worth interference in a proceeding under Article 227 of the constitution of India. The impugned order does not suffer from any illegality and it is liable to be confirmed.

The OP fails and the same is dismissed.

Sd/-
SUNIL THOMAS, JUDGE

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