

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

OP(C).No. 2880 of 2012 (O)

AGAINST THE ORDER IN EP NO.41/2012 IN OS NO.555/1989 of PRINCIPAL MUNSIF
COURT,NEDUMANGAD

PETITIONER(S):

POOVACHAL GRAMA PANCHAYAT
POOVACHAL, REPRESENTED BY ITS SECRETARY
THIRUVANANTHAPURAM.

BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SMT.A.V.PRIYA
SRI.HARISH GOPINATH

RESPONDENT(S):

LALITHAMMA
D/O. JOSEPH, LALITHA BHAVAN, MINI NAGAR
NAKRANCHIRA, PERUNKALAM VILLAGE, NEDUMANGAD TALUK
THIRUVANANTHAPURAM-695102.

BY ADVS.SRI..ISSAC M.PERUMPILLIL
SRI.IIJO PAUL KALLOOKKARAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-06-2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE JUDGMENT DATED 22-12-2000 IN O.S.555 OF 1989 ON THE FILE OF THE PRINCIPAL MUNSIFF NEDUMANGAD.

EXHIBIT P2: TRUE COPY OF THE JUDGMENT DATED 23-12-2009 IN O.S. 204/2004 AND O.S.42 OF 2005, ON THE FILE OF THE ADDITIONAL MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT P3: TRUE COPY OF THE DECREE 23-12-2009, IN O.S. 204 OF 2004 ON THE FILE OF THE ADDITIONAL MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT P4: TRUE COPY OF THE COMMON JUDGMENT DATED 30-09-2004, IN WP(C) 36836 OF 2003 AND WP(C) 16087 OF 2004.

EXHIBIT P5: TRUE COPY OF THE JUDGMENT IN WP(C) NO.22994 OF 2005 OF THIS COURT.

EXHIBIT P6: TRUE COPY OF E.P.41 OF 2012 IN O.S.555 OF 1989 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT P7: TRUE COPY OF THE COMMISSIONER'S REPORT DATED 16-03-2012 FILED IN E.P. 41 OF 2012 IN O.S. 555 OF 1989 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT P8: TRUE COPY OF E.A.NO. 116 OF 2012, DATED 22-03-2012 IN E.P.41 OF 2012 IN OS 555 OF 1989 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT P9: TRUE COPY OF THE OBJECTION DATED 30-03-2012 FILED BY THE PETITIONER TO E.P. 41 OF 2012 IN O.S. 555 OF 1989 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT P10: TRUE COPY OF THE OBJECTION DATED 30-03-2012, IN EA 116/2012 IN OS 555 OF 1989 DATED 6.7.2012

EXHIBIT P11: TRUE COPY OF THE ORDER OF THE PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD, DATED 12-04-2012, IN E.A. 116 OF 2012 IN E.P. 41 OF 2012 IN O.S. 555 OF 1989 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT P12: TRUE COPY OF THE E.A. 160/2012 DATED 21-05-2012, IN E.A. 116/2012 IN E.P.41 OF 2012 IN O.S.555 OF 1989 ON THE FILE OF THE PRINCIPAL MUNSIFF COURT, NEDUMANGAD.

EXHIBIT P13: TYPED COPY OF THE ORDER IN EXT. P13, TAKEN DOWN BY THE PETITIONER'S COUNSEL FROM THE COURT- RECORDS.

EXHIBIT P14: THE MAHAZAR IN RESPECT OF OPENING OF THE PATHWAY PREPARED ON 19-05-2012 IN THE PRESENCE OF THE SUB INSPECTOR OF POLICE, KATTAKADA.

EXHIBIT P15: TRUE COPY OF THE ORDER DATED 03-07-2012, IN E.P. 41/2012 IN O.S.555/1989 ON THE FILE OF THE PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD.

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RESPONDENTS' EXHIBITS

EXT.R1(a) THE TRUE COPY OF THE PRIVATE COMPLAINT PREFERRED BY THE
RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, KATTAKADA DATED
3.5.2012

EXT.R1(b) THE TRUE COPY OF THE FIR NO.483 DATED 9.5.2012

EXT.R1(c) THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE HUSBAND OF THE
RESPONDENT, DATED 19.03.2012

EXT.R1(d) THE TRUE COPY OF THE INFORMATION OBTAINED BY HUSBAND OF THE
RESPONDENT UNDER RIGHT TO INFORMATION ACT, DATED 11.5.2012

/TRUE COPY

A.HARIPRASAD, J.

O.P.(C) No.2880 of 2012

Dated this the 16th day of June, 2015

JUDGMENT

Petitioner challenges Exts.P13 and P15 orders passed by the executing court in E.P.No.41 of 2012 in O.S.No.555 of 1989. The suit is one for permanent prohibitory injunction against the petitioner Grama Panchayat. The suit was decreed exparte. The terms of the decree would show that the petitioner (defendant) is restrained from entering plaint A schedule property or interfering with plaint B schedule pathway having 15 feet width, used for the ingress and egress to plaint A schedule property.

2. Heard the learned counsel for the petitioner and the respondent.

3. The case has a chequered career. It is seen that there were previous litigations between the respondent and the petitioner Grama Panchayat in respect of the pathway and the puramboke land through which the pathway allegedly passes through. Ext.P1 is the judgment in the suit. Ext.P2 is the common judgment in O.S.No.204 of 2004 and 42 of 2005 passed by the Additional Munsiff, Nedumangad. Both the suits were filed by the respondent against the petitioner. After considering the rival contentions, learned Munsiff dismissed both the suits.

4. Learned counsel for the petitioner took me through Ext.P4 judgment passed by Division Bench of this Court in W.P.(C) No.36836 of 2003. The respondent approached this Court seeking a writ of mandamus against the Taluk Surveyor from undertaking a second survey allegedly in contravention of the provisions of the Kerala Survey and Boundaries Act, 1961. This Court, after considering the entire facts and circumstances, declined to grant a relief to the respondent in the above writ petition. Thereafter, the respondent filed Ext.P6 execution petition before the court below. Ext.P7 is the copy of commission report submitted in that matter.

5. Learned counsel for the respondent, basing on Ext.P7, contended that the commissioner, on inspection, found out complete obstruction of vehicular entry into plaint A schedule through plaint B schedule and she has reported that fact in clear terms. In answer to this contention, learned counsel for the petitioner would submit that the Panchayat has no objection in granting a way to the respondent, but on the guise of securing a way, the respondent may not be permitted to appropriate public property (puramboke land) for her exclusive use. The plan submitted in O.S.No.204 of 2004 is produced for my perusal. It is seen that the property on the western side belongs to the respondent and on the eastern side, the so called Panchayat puramboke. On the southern

side of the respondent's property, there is a pond known as 'nakramchira'. Learned counsel for the petitioner contended that subsequent to filing of the execution petition, the alleged obstruction caused in the way leading to respondent's property had been demolished in the presence of Police officers for which Ext.P14 mahazar was executed. Grievance of the petitioner is that without noticing all these facts, the court below has passed Exts.P13 and P15 orders denying the Panchayat a hearing in the matter. Ext.P13 is the order passed on a review petition. It is the case of the Panchayat that they filed an objection to the commissioner's report, but that was not considered by the executing court. In the order passed on the review petition, the court below has recorded that no objection had been filed by the Panchayat, which according to the learned counsel for the petitioner, is a wrong statement. Learned counsel for the respondent submitted that the Panchayat had filed objection only after passing the order by the executing court. Ext.P15 is the order passed by the executing court deputing an Amin to ascertain whether the obstruction was removed or not. It is also directed that the Amin should remove the obstruction in terms of the decree, if the obstruction had not already been removed. Learned counsel for the petitioner submits that the court below did not consider the scope of the decree. The consistent stand taken by the

Panchayat is that it has no objection in granting a right of access to the respondent/plaintiff through a definite portion of the puramboke land. It is also the anxiety of the petitioner Panchayat that rest of the public property should be secured from further invasion. It is submitted by the learned counsel for the petitioner that they have only tried to fix the boundaries of a puramboke land with due respect to the terms of the decree and giving a passage of 15 feet width to the respondent.

Having heard the learned counsel on both sides, I am of the view that the question of identity of the pathway is the crux of the matter in dispute. Therefore, the court below shall take steps to ascertain whether the decree has been complied with by the petitioner Panchayat by deputing a commissioner, if required with the assistance of a Taluk Surveyor. If the pathway described in the decree schedule is set out, the whole issue can be resolved. Therefore, the commission so issued shall be directed to set out a pathway having 15 feet width through plaint B schedule for having an access to plaint A schedule from the public road on the eastern side. It is made clear that the petitioner Panchayat is entitled to secure rest of the property by making proper fencing. It is further directed that there shall not be a complaint that the decree holder (respondent) is deprived of the pathway described in the decree schedule. The parties shall appear before

the court below on 13.07.2015. Thereafter, the court below shall appoint a commission within a period of two weeks and take urgent steps to resolve the entire issue within a further period of three months.

All pending interlocutory applications will stand closed.

A. HARIPRASAD, JUDGE.

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