

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OP(C).No. 128 of 2015 (O)

I.A.NO.1807/2014 IN O.S.NO.199/2012 OF MUNSIFF COURT, HOSDURG

PETITIONER(S)/PLAINTIFF :

**E.M.KRISHNAN, AGED 57 YEARS,
S/O.LATE AMBU, CO-OPERATIVE EMPLOYEE,
RESIDING AT GOKUL, PALLATHUVAYAL IN MADIKAI VILLAE,
HOSDURG TALUK.**

BY ADV. SRI.K.A.MANZOOR ALI

RESPONDENT(S)/DEFENDANT :

- 1. A.M.AMBU, AGED 73 YEARS,
S/O.KOTTAN, AGRICULTURIST, RESIDING AT GOKUL,
PALLATHUVAYAL IN MADIKAI VILLAGE,
HOSDURG TALUK- 671 314.**
- 2. VINUKUMAR S, AGED 35 YEARS,
S/O.SIVADASAN P.D, DRIVER, RESIDING AT GOKUL,
PALLATHUVAYAL IN MADIKAI VILLAGE,
HOSDURG TALUK- 671 314.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP(C).No. 128 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PLAINT IN O.S.NO.199/2012 OF THE MUNSIFF COURT, HOSDURG.**
- P2: TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.199/2012 FILED THE DEFENDANTS.**
- P3: TRUE COPY OF THE COMMISSION APPLICATION NO.1807/2014 FILED BY THE PLAINTIFF.**
- P4: TRUE COPY OF THE OBJECTION FILED BY THE DEFENDANT.**
- P5: CERTIFIED COPY OF THE ORDER DATED 20.11.2014 IN I.A.NO.1807/2014 IN O.S.NO.199/2012 OF MUNSIFF COURT HOSDURG.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
O.P.(C) No.128 of 2015
.....

Dated this the 1st day of July, 2015

J U D G M E N T

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The right over a pathway is in question. The pleadings in the plaint show that there was severance of tenement. At the same time, the precise nature of the right being claimed is not seen pleaded. Whatever it is, it is a fact that there is a pathway. In the written statement also, the existence of a pathway has been admitted. At the same time, it has been contended that the said pathway has not been properly identified and, therefore, the petitioner is not entitled to the relief claimed.

2. It seems that initially, a Commissioner was appointed. The Commissioner has prepared a report a rough sketch appended with it. At the same time, the measurements of the pathway have not been shown in the

rough sketch. It necessitated the filing of IA No.1807/2014 before the court below. The court below has dismissed the said IA through Ext.P5 order.

3. Even though notice has been served on the respondent, there is no representation for the respondent. Heard learned counsel for the petitioner.

4. The learned counsel for the petitioner has pointed out that even in the written statement, the defendants have pleaded that the pathway has to be identified through a survey and measurement. There is no reason for the court below to dismiss IA No.1807/2014. For the proper adjudication of the matters in controversy, a Commissioner's report and a plan prepared by the Surveyor is required. When the defendants have a case that the pathway in question is not identifiable, the court below ought to have dismissed IA No.1807/2014. Therefore, Ext.P5 order is liable to be set aside.

In the result, this O.P.(Civil) is allowed and Ext.P5

order is set aside. Ext.P3 IA stands allowed. The court below shall appoint a Commissioner with the assistance of a Surveyor. Of course, the petitioner shall pay the necessary batta as may be ordered by the court below.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/01/07

// True Copy //

PA to Judge