

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

OP(C).No. 240 of 2015 (O)

A.S.NO.16/2014 OF SUB COURT, HOSDURG

PETITIONERS :

-
- 1. K.V. YESHODA, AGED 60 YEARS
W/O.LATE BALAKRISHNAN,
R/AT KARAKUZHI, AJANUR VILLAGE,
HOSDURG TALUK, P.O, AJANUR
KASARAGOD DISTRICT**
 - 2. SHALINI, D/O.LATE BALAKRISHNAN,
R/AT KARAKUZHI, AJANUR VILLAGE,
HOSDURG TALUK P.O, AJANUR,
KASARAGOD DISTRICT**

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS :

-
- 1. M.NARAYANAN, S/O.A.V RAMAN,
R/AT KARAKUZHI, AJANUR VILLAGE
HOSDURG TALUK P.O, AJANUR
KASARAGOD DISTRICT 671 531**
 - 2. M.KANNAN, S/O.A.V RAMAN,
R/AT KARAKUZHI, AJANUR VILLAGE,
HOSDURG TALUK P.O, AJANUR
KASARAGOD DISTRICT 671 531**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 29-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

OP(C).No. 240 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : TRUE COPY OF JUDGMENT DATED 10-11-2014 IN OS 445/2009 OF
MUNSIFFS COURT,HOSDURG**
- EXT.P2 : TRUE COPY OF THE ORDER DATED 20/12/2014 IN IA NO 967/2014
IN AS NO 16/2014 BEFORE THE SUBORDINATE JUDGES COURT
HOSDURG**
- EXT.P3 : TRUE COPY OF COMMISSIONER'S REPORT (EXT C1 IN OS 445/2009)**
- EXT.P4 : TRUE COPY COMMISSIONER'S SKETCH (EXT C2 IN OS 445/2009)**
- EXT.P5 : TRUE COPY OF THE DEPOSITION OF CW1 IN OS 445/2009**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

P.BHAVADASAN, J.

O.P.(C) No. 240 of 2015

Dated this the 29th day of January, 2015

JUDGMENT

Under challenge is Ext.P2 order whereby the lower appellate court has modified the interim order, which reads as follows;

“Counter filed. Heard. I am satisfied that slight modification in the order already passed is required. Hence the execution of the decree is stayed subject to maintaining status quo by both parties as seen and reported by the Advocate Commissioner, until further orders For hearing. Issue carbon copy of the order. To 28.01.2015”.

2. The learned counsel appearing for the petitioner assailed the said order on the ground that the Commission Report is challenged before the court below and therefore an order on that basis could not have been passed.

3. One needs to notice at this point of time, that the trial court has decreed the suit in favour of the plaintiff. There it is seen that there exists a way and as

claimed by the plaintiff, the plaintiff has been using the same. Then the question was regarding the length and width of the path way. The only available material before the lower appellate court was the commission report which has been accepted by the court below. Unless proved wrong, one has go by the said report. It was under those circumstance, the lower appellate court was inclined to pass the above order.

This Court finds no error in the order passed by the lower appellate court. There is no merit in this petition. This petition is dismissed.

Sd/-
P.BHAVADASAN
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE