

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

OP(C).No. 2493 of 2013 (O)

AGAINST THE ORDER/JUDGMENT IN CMA 22/2013 of PRL.S.C., THALASSERY
DATED 09-07-2013

AGAINST THE ORDER/JUDGMENT IN OS 58/2012 of MUNSIF COURT, THALASSERY
DATED 08-05-2013

PETITIONERS:

1. KANIYANKADY DINESHAN
S/O.KANNAN, 'NANDANAM', ANJARAKANDY AMSOM
KAMETH DESOM, KANNUR TALUK, KANNUR DISTRICT.
2. AJITHA DINEHSAN
W/O.DINESHAN, 'NANDANAM', ANJARAKANDY AMSOM
KAMETH DESOM, KANNUR TALUK, KANNUR DISTRICT.

BY ADVS.SRI.M.P.ASHOK KUMAR
SRI.S.NANDAGOPAL

RESPONDENT:

PALLIPRATH RAVEENDRAN
S/O.KUNHAPPU, 'PRASANTHI', ANJARAKANDY AMSOM
KAMETH DESOM, KANNUR TALUK, KANNUR DISTRICT-670612.

R BY ADV. SRI.C.P.PEETHAMBARAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) .No. 2493 of 2013 (O)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1 : PHOTOCOPY OF THE ORDER IN IA 310/12 AND 357/12 IN OS NO. 58/12 DATED 27-2-2012.

EXHIBIT P2 : PHOTOCOPY OF THE ORDER IN IA 2670/12 IN OS NO. 58/12 DATED 8-5-13.

EXHIBIT P3 : PHOTOCOPY OF THE ORDER IN IA 1290/13 IN CMA NO.22/13 DATED 9-7-13.

EXHIBIT P4: PHOTOCOPY OF THE COMMISION REPORT DATED 11/11/2013 FILED BEFORE THE MUNSIFF COURT, THALASSERRY

RESPONDENT(S) ' EXHIBITS - NIL

// True Copy //

P.A. to Judge

sas

B. KEMAL PASHA, J.

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O.P.(C) No.2493 of 2013
.....

Dated this the 23rd day of July, 2015

J U D G M E N T

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. It seems that O.S.No.58 of 2012 has been filed by the plaintiff by claiming right over a pathway passing through the side of the property of the petitioners. At the same time, it seems that no particular right has been claimed by the plaintiff over the said property, apart from stating that a pathway is there.

3. According to the petitioners, permission was granted to one of their neighbours, Sri.Mamba Pradeepan, to take vehicles through a portion of their property, for enabling him to take construction materials for putting up his

building and thereafter the said arrangement was terminated. By making use of such an opportunity, the petitioner has forwarded a claim over the pathway without having any particular right over the pathway. According to the petitioners, the plaintiff has not claimed any right of easement over the pathway. Those matters do not arise for consideration at present. Those matters are required to be looked into by the court below while dealing with the maintainability of the suit.

4. It seems that some constructions were made by the petitioners by encroaching into portions of the alleged pathway. Presently, it seems that an order of temporary injunction was passed by the trial court and those constructions were ordered to be removed, and to restore those portions of the alleged pathway. The said order was challenged in appeal. The appeal also failed because of the fact that the petitioners had not challenged the order of injunction passed by the court below; whereas what was

under challenge was the order passed by the court below to restore the pathway.

5. On hearing either side, this Court is of the view that the court below can be directed to dispose of O.S.No.58/2012, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this judgment.

In the result, this Original Petition is disposed of by directing the court below to dispose of O.S.No.58/2012, as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this judgment, quite untrammelled by any of the observations made by the court below in the order as well as the observations made by the appellate court.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge