

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP(C) .No. 897 of 2015 ()

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CMA 2/2015 of SUB COURT, HOSDRUG DATED 07-03-2015

PETITIONER/RESPONDENT/PLAINTIFF :

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PATLATH UNNYAN VALAPPIL ABDUL SALAM, AGED 49 YEARS,  
S/O. KUNHABDULLA, RESIDING AT ZAMZAN VILLA,  
P.O.KOLAVAYAL, KANHANGAD, HOSDURG TALUK,  
KASARAGOD DISTRICT.

BY ADVS.SRI.T.K.VIPINDAS  
SRI.K.V.SREE VINAYAKAN  
SRI.K.M.MUHAMMED HUSSAIN

RESPONDENT/APPELLANT/DEFENDANT :

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PATLATH UNNYAN VALAPPIL ABDUL RAHIMAN, AGED 57 YEARS,  
S/O. KUNHABDULLA, AINGOTH HOUSE, P.O.PADNEKKAD,  
HOSDURG TALUK, KANHANGAD VILLAGE,  
KASARAGOD DISTRICT-671 123.

R1 BY ADV. SRI.SURESH KUMAR KODOTH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD  
ON 18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

DSV/24/8/15

OP(C) .No. 897 of 2015 ()

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APPENDIX

PETITIONER'S EXHIBITS :

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P1 : COPY OF THE ORDER DTD.9.2.2015 IN IA 2127/2014 IN OS  
419/2014 ON THE FILE OF MUNSIFF'S COURT, HOSDURG.

P2 : COPY OF THE JUDGMENT OF THE COURT OF SUBORDINATE JUDGE,  
HOSDURG IN CMA 2/2015 DTD.7.3.2015.

RESPONDENT'S EXHIBITS :

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NIL

// True Copy //

P.A. To Judge

DSV/24/8/15

**B.KEMAL PASHA, J.**

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O.P.(C). No.897 of 2015

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*Dated this the 18<sup>th</sup> day of August, 2015*

**J U D G M E N T**

In a suit for injunction, the plaintiff, who is the petitioner herein, has claimed that he is in possession of excess extent of property than the extent noted in his title deed. The parties are direct brothers. Both the parties have purchased the properties in the year 1987 and thereafter they continued to possess the properties. In the year 2002, a road was carved out through the property. Thereafter the dispute has arisen between the parties in the year 2013.

According to the petitioner, the property of the respondent does not extent to the road; whereas, it is the specific case of the respondent that one of the boundaries of his property is the road. Those are the matters which require evidence.

2. Initially, the court below has granted an order of temporary injunction in favour of the petitioner. The same was challenged by the respondent through C.M.A.No.2 of 2015 before the Subordinate Judge's Court, Hosdurg. The appellate court after hearing both sides, has chosen to allow the appeal and to dismiss the I.A. Presently, the injunction earlier granted, stands vacated.

3. On hearing either side, it has come out that the question regarding the possession of the alleged excess extent of property by the petitioner can only be established through evidence. Matters being so, presently, an order as the one sought for in the I.A cannot be granted. At the same time, the court below can be directed to dispose of the suit, quite untrammelled by any of the observations made by the court below in the order on the I.A. as well as the

observations and findings entered by the appellate court in the C.M.A.

In the result, this Original Petition (Civil) is disposed of as above.

Sd/-  
**B.KEMAL PASHA**  
**JUDGE**

DSV/18/8/15