

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP(C).No. 2806 of 2013 (O)

**AGAINST THE ORDER IN IA NO.4371/2013 IN OS.NO. 1158/2007
OF IIND ADDL. MUNSSIF COURT, ERNAKULAM**

PETITIONER :

**MICHEALLE FATHIMA
AGED 29, W/O.MOHAMMED NIAZ,
ZERNE, EDAPPALLY P.O, ERNAKULAM
REP. BY POWER OF ATTORNEY HOLDER MOHAMMED NIAZ
S/O.DR.ALIKOYA, AGED 38, ZIREENE CHUTTUPADUKARA
EDAPPALLY NORTH VILLAGE, KANAYANNUR TALUK.**

**BY ADVS.SRI. P. MARTIN JOSE
SRI.P.PRIJITH
SRI.S.VAIDYANATHAN**

RESPONDENT :

**K.P. MUJEEB,
S/O.K.P.ALIPPA, AGED 39, ALFA HOUSE, MANJERY P.O.
ERANADU TALUK, MALAPPURAM DISTRICT.**

**BY ADVS.SRI. P. CHANDRASEKHARAN
SRI.C.A.MAJEED**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

OP(C).No. 2806 of 2013 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT-P1: TRUE COPY OF THE PLAINT IN O.S.NO.1158 OF 2007 FILED BEFORE THE ADDL.MUNSIFF'S COURT, ERNAKULAM.
- EXHIBIT-P2: TRUE COPY OF SKETCH.
- EXHIBIT-P3: TRUE COPY OF DOCUMENT NO.2930 OF 2003 DATED 24.7.2003.
- EXHIBIT-P4: TRUE COPY OF DOCUMENT NO.2700/2004.
- EXHIBIT-P5: TRUE COPY OF DOCUMENT NO.2886 OF 2007 DATED 7.6.2007.
- EXHIBIT-P6: TRUE COPY OF JUDGMENT IN O.P.(C) NO.1143 OF 2011 DATED 14.08.2012 OF THIS HON'BLE COURT.
- EXHIBIT-P7: TRUE COPY OF I.A.NO.4371 OF 2013 IN O.S.NO.1158 OF 2007 DATED 25.07.2013.
- EXHIBIT-P8: TRUE COPY OF WITNESS LIST IN O.S.NO.1158 OF 2007 DATED 25.07.2013.
- EXHIBIT-P9: TRUE COPY OF OBJECTION TO EXHIBIT-P7 FILED BY THE DEFENDANT DATED 26.07.2013.
- EXHIBIT-P10: TRUE COPY OF ORDER IN I.A.NO.4371 OF 2013 IN O.S.NO.1158 OF 2007 DATED 27.07.2013.
- EXHIBIT-P11: COPY OF DOCUMENT NO. 1657 OF 2003.
- EXHIBIT-P12: COPY OF WRITTEN STATEMENT IN EXT.P1 SUIT.
- EXHIBIT-P13: COPY OF COMMISSION REPORT DATED 25-3-2013.
- EXHIBIT-P14: COPY OF LETTER DATED 24-3-2007 ISSUED BY GREATER COCHIN DEVELOPMENT AUTHORITY TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

B. KEMAL PASHA, J.

.....
O.P.(C) No.2806 of 2013
.....

Dated this the 21st day of July, 2015

J U D G M E N T

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The suit based on a right of easement by grant is the one before the court below. The petitioner, who is the plaintiff, has got a case that he has been making use of the road for ingress and egress to 11.25 cents of property belongs to the plaintiff. In the said property, he has put up a multi storied building and sold it to different persons. All of them are using the said pathway lying at the eastern side of the said property. It is the case of the petitioner that subsequently, the defendant purchased a property situated on the eastern side of the road, at first. The western boundary of that property is shown as pathway having 4 metres width. Subsequently, the defendant purchased another property situated at the western side of that road which is just opposite to the property earlier purchased by

him. After that, some more properties were acquired by the defendant from the northern portions situated at the eastern side of the pathway. It is the case of the petitioner that after the purchase of those properties, the defendant wanted to make those properties together as a compact plot, for which there were attempts from the part of the defendant to close down the pathway by putting up a gate. That was prevented and the suit was filed.

2. Evidence was recorded in the suit. In the course of the evidence, according to the petitioner, the petitioner came to know that the alleged pathway was originally surrendered by one Joseph Kuttikat, who is the then owner of the property, to the GCDA. The pathway was also allegedly developed at the instance of the GCDA. The petitioner wanted to get the concerned files relating to the matter from the GCDA. Even though he has attempted his level best, the documents were not made available to him by the GCDA and, therefore, a petition was filed before the

court below as IA No.4371/2013 for causing the production of the said file before the court below. Through Ext.P10 order, the court below has dismissed the said IA. The said order is under challenge.

3. In this OP, it seems that this Court was constrained to appoint an Advocate Commissioner to verify the availability of the file at the GCDA. It seems that after all efforts, the Commissioner appointed by this Court could trace out the files and registers and produced it before this Court. Presently, the said files and connected registers are available. Let that files and registers seized from the GCDA be go to the court below. The court below shall consider those files and registers and give an opportunity to the petitioner to prove the contents of the files and registers, through the examination of witness/witnesses from the GCDA.

In the result, this O.P.(Civil) is allowed and the files and registers procured by the Advocate Commissioner from the

GCDA along with the Commissioner's report are ordered to be forwarded to the court below. The court below shall give an opportunity to the petitioner to produce witness/witnesses for proving the contents of the said documents. Being a suit of 2007, the court below shall dispose of the suit, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/21/07

// True Copy //

PA to Judge