

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

OP(C).No. 1131 of 2015 (O)

OS 1329/2013 of I ADDL.MUNSIFF COURT, TRIVANDRUM

PETITIONER :

**R.HARIKUMAR, AGED 47 YEARS,
SREEDEVI MANDIRAM, NEAR PUMP HOUSE,
ANAYARA P.O., THIRUVANANTHAPRUAM**

**BY ADVS.SRI.D.KISHORE
SMT.MINI GOPINATH**

RESPONDENT :

**M.C.GIRIJA
ROHINI, NEAR PUMP HOUSE, ANAYARA P.O.,
THIRUVANANTHAPURAM-695 029**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 27-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN O.S 1329/2013.
- EXHIBIT P2: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A 6375/2013
IN O.S 1329/2013.
- EXHIBIT P3: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY TH RESPONDENT
TO EXHIBIT P2
- EXHIBIT P4: TRUE COPY OF THE COMMISSION REPORT IN O.S 1329 OF 2013.
- EXHIBIT P5: TRUE COPY OF THE ORDER DATED 7-11-2013 IN I.A 6375/2013 IN
O.S 1329/2013 OF FIRST ADDITIONAL MUNSIFF'S COURT,
THIRUVANANTHAPURAM.
- EXHIBIT P6: TRUE COPY OF THE JUDGMENT DATED 10-04-2015 IN CMA 99/2013 OF
ADDITIONAL DISTRICT COURT-VI,THIRUVANANTHAPURAM.
- EXHIBIT P7: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A 8613/2013 IN
O.S 1749/2013
- EXHIBIT P8: TRUE COPY OF THE COMMISSION REPORT IN O.S 1749 OF 2013.
- EXHIBIT P9: TRUE COPY OF THE ORDER DATED 12-2-2014 IN I.A 8613/2013 IN
O.S 1749 OF 2013 OF PRINCIPAL MUNSIFF'S COURT,
THIRUVANANTHAPURAM

RESPONDENT(S)' EXHIBITS : **NIL.**

//TRUE COPY//

P.A.TO JUDGE

bp

B.KEMAL PASHA, J.

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O.P.(C). No.1131 of 2015

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Dated this the 27th day of May, 2015

J U D G M E N T

The width of a pathway is in question. The petitioner claims that over and above the easement of grant over a 5 links width pathway, obtained by him through the document, he was making use of a 3 metres width pathway from 1979 onwards and thereby he is entitled to prescriptive right of easement over a 3 metres width pathway. According to the petitioner, his right over such a 3 metres width pathway cannot be curtailed by the mere reason of an express grant over a 5 links width pathway in the document.

2. According to the petitioner, he has been using a 3 metres width pathway for taking cars and vehicles to his property. Per contra, the respondent contended that a temporary permission was given to the petitioner to unload some business materials and making use of that opportunity, he has filed a suit after placing two cars by

putting up a temporary shed in his property and took out a commission, in order to cook up evidence to show that he has been using a motorable road access to his property through the disputed pathway. The application seeking an order of temporary injunction was disposed of by the court below by ordering a 5 links width pathway.

3. The matter was taken up in C.M.A. The appellate court has passed a detailed judgment holding that the question as to whether the petitioner is entitled to make use of a pathway having 3 metres width, is a matter to be decided after taking evidence. The appellate court also has taken a view that the respondent can be restrained from interfering with the user by the petitioner over a 5 links width pathway.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. On hearing either side and on perusing the orders passed by both the courts below, this Court is of the view

that the matter relating to the right of the petitioner to make use of a 3 metres width pathway, by way of easement by prescription, is a matter to be decided on evidence. Presently, the petitioner can make use of only a 5 links pathway as per the orders passed by both the courts below. Let it continue as such. The court below can be directed to dispose of both the suits as expeditiously as possible, quite untrammelled by any of the observations made by the court below as well as the appellate court in the matter.

In the result, this Original Petition (Civil) is disposed of by directing the court below to dispose of both the suits as expeditiously as possible, at any rate, within six months from the date of receipt of a copy of this judgment, quite untrammelled by any of the observations made by the court below, as well as the appellate court in the C.M.A.

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

Sd/-

B.KEMAL PASHA
JUDGE