

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP(C).No. 1133 of 2015 ()

I.A.NO. 2108/2014 IN OS NO. 350/2014 OF MUNSIF COURT, VARKALA

PETITIONER :

**SOORYA,
W/O. SAJEEV, AGED 27 YEARS
RESIDING AT 'REVATHY', KEDAKULAM, AYIROOR P.O.,
HARIHARAPURAM DESOM, AYIROOR VILLAGE
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT :

**SHERLY,
D/O.GANGADHARAN, AGED 45 YEARS
RESIDING AT S.S.MANDIRAM, KEDAKULAM
AYIROOR P.O., HARIHARAPURAM DESOM, AYIROOR VILLAGE
THIRUVANANTHAPURAM DISTRICT, PIN: 695 310.**

**BY ADVS. SRI.C.R.SIVAKUMAR
SMT.MINI.M.NAIR
SRI.ELDHO MATHEW**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

OP(C).No. 1133 of 2015 ()

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1: TRUE COPY OF THE REPORT AND SKETCH OF THE ADVOCATE
COMMISSIONER DATED 2/8/2014.
- EXT. P2: TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER
DATED 7/11/2014.
- EXT. P3: TRUE COPY OF THE ORDER IN I.A NO.2108/2014 IN OS O.350/2014 ON
THE FILE OF THE COURT OF THE MUNSIF OF VARKALA DATED
8/4/2015.
- EXT. P4: TRUE COPY OF THE PHOTOGRAPHS DATED NIL.
- EXT. P5: TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER DATED
29/4/2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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B.KEMAL PASHA, J.

.....
O.P.(C) No. 1133 of 2015

.....
Dated this the 22nd day of June, 2015

J U D G M E N T

It seems that initially the petitioner, who is the plaintiff in the suit, could obtain an order of temporary injunction restraining the respondent herein from closing down the alleged pathway leading to the property of the petitioner. According to the petitioner, the said pathway has been used by the petitioner for ingress and egress, as well as for vehicular traffic to her house. The petitioner has taken her car into her property and it is seen kept at the side of her house. The *exparte* order of temporary injunction passed by the court below was stoutly opposed by the respondent before the court below. Thereafter, the court below has

dismissed the application for temporary injunction, after hearing both sides, under Order XXXIX Rule 4 CPC. According to the petitioner, a counter claim was preferred by the respondent for fixation of boundary of the property. On the disposal of the application for temporary injunction, the respondent started construction of a compound wall to the property thereby making it impossible for the petitioner to take out the car from the property.

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

3. According to the respondent, there is an alternate pathway available to the petitioner and the car can be taken out from the house through the alternate pathway available. The learned counsel for the petitioner submits that no such pathway is there and it is not possible for the petitioner to take out the car from the property. The learned counsel for the respondent has pointed out that the respondent has filed an application before this Court for deputing the earlier

Commissioner in the case to overlook and supervise the taking out of the car by the respondent out of the property.

4. According to the learned counsel for the respondent, the respondent will make further arrangement to take out the car without any damage and the same can be supervised by the Commissioner, who was earlier appointed by the court below.

In the result, this Original Petition is disposed of by directing the court below to appoint the earlier Commissioner once again for supervising the taking out of the car from the property of the petitioner by the respondent or persons employed by the respondent. The said exercise should be carried out without causing any damage to the car. All other matters involved in the suit, are left open and the court below shall consider the matter untrammelled by any of the observations made by the court below in the order dismissing the injunction application. This Court has not considered the merit or otherwise of the claims of either

side in the matter and all matters are left open to be decided by the court below. The respondent shall pay the Commissioner's batta as may be ordered by the court below.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge