

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C).No.1173 of 2015 (O)

**E.P NO.152/2008 IN O.S. NO.613/1992 OF THE PRINCIPAL MUNSIF COURT-II,
KOZHIKODE.**

PETITIONER/RESPONDENT/JUDGMENT DEBTOR:

**CHAKYAYI RAJAN,AGED 65 YEARS,S/O.PERUNTHU,
CHAKYAYI HOUSE,PINNANATH PARAMBA,
NADUVATTOM AMSOM,DESOM,KOZHIKODE DISTRICT.**

**BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU**

RESPONDENT/PETITIONER/DECREE HOLDER:

**MANDAYIL RUGMINI,AGED 76 YEARS,
W/O.LATE SEKHARAN,MANDAYIL HOUSE,
NADUVATTOM AMSOM DESOM,KOZHIKODE - 673 015.**

R1 BY ADV.SRI.G.SREEKUMAR (CHELUR)

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 28-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

OP(C).No.1173 of 2015 (O)

APPENDIX

PETITIONER'S' EXHIBITS:

- P1- COPY OF THE ORDER DT. 10.10.14 IN C.R.P NO.641/2010 OF THIS HONOURABLE COURT.
- P2- COPY OF THE COMMISSION REPORT WITH THE SKETCH FILED BY THE ADVOCATE COMMISSIONER IN E.P NO.152/2008 IN OS NO.613/1992. BEFORE THE PRINCIPAL MUNSIFF'S COURT - II,KOZHIKODE DT. 17.12.14.
- P3- COPY OF THE PETITION FILED BY THE RESPONDENT TO REMIT THE COMMISSION REPORT IN EP NO.152/2008 IN OS NO.613/1992 BEFORE THE PRINCIPAL MUNSIFF'S COURT - II, KOZHIKODE DT. 20.12.14.
- P4- COPY OF THE REPORT FILED BY THE ADVOCATE COMMISSIONER IN EP NO.152/2008 IN OS NO.613/1992 BEFORE THE PRINCIPAL MUNSIFF'S COURT - II, KOZHIKODE DT. 24.1.15.
- P5- COPY OF THE ORDER IN EP NO.152/2008 IN OS NO.613/1992 DT. 31.3.15 ON THE FILE OF THE PRINCIPAL MUNSIFF COURT - II, KOZHIKODE.
- P6- COPY OF THE PERMIT ISSUED BY THE BEYPORE PANCHAYATH TO THE PETITIONER AND HIS WIFE DT. 23.10.92.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

B.KEMAL PASHA, J.

.....
O.P.(C) No.1173 of 2015
.....

Dated this the 28th day of May, 2015

J U D G M E N T

Heard both sides.

2. According to the learned counsel for the petitioner, the respondent is not empowered to construct a compound wall separating the pathway from the remaining property of the petitioner, as the alleged pathway to the respondent is only one of prescriptive easement. It is also argued that from the temple compound situated at the southern side, a small portion is left by the temple authorities in between the property of the petitioner and the temple compound.

3. It has been consistently found that the decree holder, who is the respondent herein, is entitled to have a four feet width pathway by way of easement through the

southern extremity of the property of the petitioner. The respondent is permitted to put up a basement for separating the said four feet width pathway from the remaining property of the petitioner. At the same time, the petitioner should also get access to that pathway for which a portion of four feet width on that basement line, at the choice of the petitioner should be left open for enabling the petitioner also to have access into that pathway. The basement should have only a maximum height of one foot from the ground level. The respondent is not entitled to construct a compound wall on the basement: at the same time, if the petitioner wants to construct a compound wall, he can effect such a construction on the said basement.

With these observations, this Original Petition is disposed of.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge