

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

OP(C).No. 1443 of 2015 (O)

**AGAINST THE JUDGMENT IN CMA 2/2015 of DISTRICT COURT, KASARAGOD
DATED 20.05.2015**

AGAINST THE ORDER IN O.S.NO. 314/2014 of ADDL.MUNSIFF'S COURT, KASARAGOD

PETITIONER(S)/RESPONDENTS/RESPONDENTS :-:

1. **MOIDEEN KUNHI, AGED 44 YEARS,
S/O.BANDI MUHAMMED, RESIDING AT THAIVALAPPU HOUSE
CHENGALA VILLAGE, CHENGALA P.O.
KASARAGOD TALUK AND DISTRICT, PIN - 671 541.**
2. **HAMEED, AGED 31 YEARS,
S/O.MUGU ABDULLA, RESIDING AT BALADKA HOUSE, CHERKALA
CHENGALA VILLAGE, CHENGALA P.O.
KASARAGOD TALUK AND DISTRICT, PIN - 671 541.**

**BY ADVS.SRI.T.R.RAVI
SRI.JAWAHAR JOSE
SRI.V.VINAY MENON
SMT.CISSY MATHEWS
SRI.ARUN AJAY SHANKAR**

RESPONDENT(S)/APPELLANT/PETITIONER :-:

**NAJILA, AGED 26 YEARS,
D/O.ABDULLA BEKAL AND W/O.MUHAMMED SHEREEF, CHERKALA
CHENGALA VILLAGE, CHENGALA P.O.
KASARAGD TALUK AND DISTRICT, PIN - 671 541.**

**R1 BY ADV. SRI.D.KRISHNA PRASAD
R1 BY ADV. SRI.P.VISHNU PRASAD**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMV

OP(C).No. 1443 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1. COPY OF THE ORDER DATED 13.01.2015 IN I.A.NO.1726/2014 IN O.S.NO.314/2014 OF THE MUNSIF'S COURT, KASARAGOD.
- EXHIBIT P2. COPY OF THE ORDER DATED 20.05.2015 OF THE DISTRICT COURT, KASARAGOD IN CMA NO.2/2015.
- EXHIBIT P3. COPY OF THE COMMISSION REPORT DATED 04.12.1992 IN O.S.NO.682/1992.
- EXHIBIT P4. COPY OF THE COMMISSION REPORT DATED 11.09.1995 IN O.S.NO.682/1992.
- EXHIBIT P5. COPY OF THE COMMISSION REPORT DATED 04.08.1996 IN O.S.NO.682/1992.
- EXHIBIT P6. COPY OF THE COMMISSION REPORT DATED 11.02.2008 IN O.S.NO.109/2007.
- EXHIBIT P7. COPY OF THE PLAN APPENDED TO EXT.P6 COMMISSION REPORT.
- EXHIBIT P8. COPY OF THE COMMISSION REPORT DATED 16.10.2008 IN O.S NO.109/2007.
- EXHIBIT P9. COPY OF THE PLAN APPENDED TO EXHIBIT P9 COMMISSION REPORT.
- EXHIBIT P10. COPY OF THE SKETCH PRODUCED BY THE RESPONDENT ALONG WITH THE PLAINT IN O.S NO.314/2014.

RESPONDENT(S)' EXHIBITS :

- EXT.R1A COPY OF EXT.C1 REPORT DATED 27.09.2014 IN O.S.NO.314/2014 ON THE FILE OF THE ADDITIONAL MUNSIF'S COURT, KASARAGOD.
- EXT.R1B COPY OF THE PLAINT DATED 30.10.1992 IN O.S.NO.682/1992 ON THE FILE OF THE ADDITIONAL MUNSIF'S COURT, KASARAGOD.
- EXT.R1C COPY OF THE JUDGMENT DATED 25.10.1997 IN O.S.NO.682/1992 ON THE FILE OF THE ADDITIONAL MUNSIF'S COURT, KASARAGOD.

/TRUE COPY/

P.A.TO JUDGE

AMV

K. ABRAHAM MATHEW, J.

O.P.(C)No.1443 of 2015

Dated this the 7th day of December, 2015

J U D G M E N T

The petitioners are the defendants in OS.314 of 2014 on the file of Munsiff Court, Kasaragod, which has been filed by the respondent for a perpetual injunction in respect of a pathway described in plaint B schedule. The latter filed an application for a temporary injunction restraining the former from altering the nature of the plaint B schedule pathway and for other reliefs. That was dismissed by the learned Munsiff by Ext.P1 order. In CMA 2 of 2015 the learned District Judge has vacated the order and has restrained the petitioners from "trespassing over the way noted by the commissioner in Ext.C1 or in any way interfering with the peaceful user of the same by the plaintiff till the disposal of the suit". This is challenged.

2. Heard.

3. The only available evidence in the case is Ext.R1 (a) report filed by the commissioner, who inspected the property immediately after the institution of the suit. He has reported that he could see an old mud road in east-west direction and it leads to the plaint A schedule

property. Further he has observed that there is an old compound wall about 30 meters length on both side of the mud road and the road appears to be old. The judgment of the learned District Judge shows that injunction has been granted by him in respect of this road. The learned counsel for the petitioners submits that this is not the road claimed by the respondent, which is evident from Ext.P10 sketch produced by the respondent along with the suit. The pathway claimed in this suit passes through the middle of the respondent's property. It is obvious that this is not the road noted by the commissioner in his report. I have no doubt that the learned District Judge did not take notice of this fact, which is why he has set aside the order of the learned Munsiff.

In the result, this OP is disposed of with the clarification that the road mentioned in Ext.P2 judgment in CMA 2 of 2015 is the mud road passing between two compound walls and which reaches the plaint A schedule property. The injunction will be confined to this road alone.

sd/-

**K. ABRAHAM MATHEW
JUDGE**

R.AV

//True Copy//

PA to Judge