

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

OP(C).No. 1523 of 2015 (O)

(O.S.NO.572/2009 OF 1ST ADDITIONAL SUB COURT, ERNAKULAM)

PETITIONERS:

1. BOSCO.K.J.,S/O.JOSEPH,AGED 52 YEARS,
KOCHIPARAMBIL HOUSE, VENNALA P.O.,
ERNAKULAM DISTRICT.
2. BABY K.P.,S/O.PAPPU, AGED 54 YEARS,
KANATTU HOUSE, VENNALA P.O, ERNAKULAM DISTRICT.
3. ROSY, AGED 50 YEARS,W/O.BABY,
KANATTU HOUSE, VENNALA P.O.,
ERNAKULAM DISTRICT.
4. MATHEW T.V.,S/O.VARKEY, AGED 61 YEARS,
THALIYATH HOUSE, VENNALA P.O.,
ERNAKULAM DISTRICT.
5. PETR V.J.,
VALIYAPARAMBIL HOUSE, VENNALA P.O,
ERNAKULAM DISTRICT
6. NANDAKUMAR,
S/O.THE LATE SEKHARAN NAIR,
ROHINI 32/3216/A(PLAINTIFF NO.7), VENNALA P.O.,
ERNAKULAM DISTRICT.
7. A.S.AMBIKADEVI,
W/O.NANDAKUMAR, ROHINI 32/3216/A, VENNALA P.O.,
ERNAKULAM DISTRICT.
8. JOY T.C.,
THEREPARAMBIL HOUSE, VENNALA P.O,
ERNAKULAM DISTRICT
9. BABU,
S/O.KRISHNAN, THALIYIL PARAMBIL, VENNALA P.O.,
ERNAKULAM DISTRICT.

OP(C).NO.1523/2015

- 10. RAJANI,
W/O.BABU, THALIYIL PARAMBIL,
VENNALA P.O., ERNAKULAM DISTRICT.**

**BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ**

RESPONDENTS:

- 1. RADHAMANI, D/O.YASODAMMA, AGED 55 YEARS,
THEREPARAMBIL HOUSE, VENNALA P.O.-682 028
EDAPPALLY SOUTH VILLAGE.**
- 2. RAJESWARI, D/O.YASODAMMA, AGED 50 YEARS,
THEREPARAMBIL HOUSE, VENNALA P.O.-682 028
EDAPPALLY SOUTH VILLAGE.**
- 3. LEELA, D/O.YASODAMMA,AGED 48 YEARS,
THEREPARAMBIL HOUSE, VENNALA P.O.-682 028
EDAPPALLY SOUTH VILLAGE.**
- 4. MADHUSOODANAN, S/O.YASODAMMA,AGED 61 YEARS,
THEREPARAMBIL HOUSE, VENNALA P.O.- 682 028
EDAPPALLY SOUTH VILLAGE.**
- 5. SANTAKUMARI ALIAS 'MARY HOPE',
D/O.MADHAVI AMMA, AGED 61 YEARS,
MALOTH HOUSE, VENNALA P.O.-682 028
EDAPPALLY VILLAGE.**
- 6. STEPHENSON ALIAS STEPHEN,
S/O.JOSHI, MALOTH HOUSE, VENNALA P.O.- 682 028
EDAPPALLY VILLAGE**
- 7. SEENA AUGUSTINE, D/O.SANTHAKUMARI,
MALOTH HOUSE, VENNALA P.O.-682 028
EDAPPALLY VILLAGE**
- 8. VARKEY ANTONY, AGED 58 YEARS,
CHACKUMTHARA HOUSE, VENNALA P.O.-682 028
EDAPPALLY SOUTH VILLAGE.**

R5 TO R7 BY ADV. SRI.K.M.VARGHESE

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE PLAINT IN OS NO.572 OF 2009 SUBMITTED BY THE PETITIONERS BEFORE FIRST ADDITIONAL SUB COURT, ERNAKULAM
- P2:- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS 1 TO 4 IN SUIT NO OS 572 OF 2009 ON THE FILES OF THE FIRST ADDITIONAL SUB COURT, ERNAKULAM
- P3:- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT 5 TO 7 IN SUIT NO.572 OF 2009 ON THE FILES OF THE FIRST ADDITIONAL SUB COURT,ERNAKULAM
- P4:- TRUE COPY OF THE REGISTERED AGREEMENT BEARING DOCUMENT NO 4510 OF 1984 OF SRO EDAPPALLY
- P4(A):- TRUE COPY OF DOCUMENT NO.932 OF 1993 OF SRO, EDAPPALLY
- P5:- TRUE COPY OF SALE DEED DTD 22/12/1984 REGISTERED AS DOCUMENT NO 4512 OF 1984 OF SRO EDAPPALLY EXECUTED BY YASODAMMA IN FAVOUR OF THE IST PETITIONER
- P6:- TRUE COPY OF SALE DEED DTD 18/4/1996 REGISTERED AS DOCUMENT NO 1800 OF 1996 OF SRO EDAPPALLY EXECUTED BY THE 5TH RESPONDENT IN FAVOUR OF THE PETITIONERS 6 AND 7
- P7:- TRUE COPY OF THE RECTIFICATION DTD 14/11/2000 REGISTERED AS DOCUMENT NO.5414 OF 2000 OF SRO EDAPPALLY EXECUTED BY THE 5TH RESPONDENT IN FAVOUR OF THE PETITIONERS 6 AND 7
- P8:- TRUE COPY OF THE AGREEMENT DTD 14/11/2000 EXECUTED BY THE 5TH RESPONDENT IN FAVOUR OF THE PETITIONERS 6 AND 7
- P9:- TRUE COPY OF THE SALE DEED DTD 20/5/2002 REGISTRED AS DOCUMENT NO.2176 OF 2002 OF SRO EDAPPALLY EXECUTED IN FAVOUR OF THE PETITIONERS NOS.9 AND 10
- P10:- TRUE COPY OF THE PARTITION DEED DTD 30/10/1967 REGISTERED AS DOCUMENT NO.2738 OF 1967 OF SRO EDAPPALLY EXECUTED BY RESPONDENT NO.5 SAROJINI AND OTHERS
- P11:- TRUE COPY OF THE EXCHANGE DEED DTD 23/4/1986 REGISTERED AS DOCUMENT NO.1464 OF 1986 OF SRO EDAPPALLY EXECUTED BY THE 5TH RESPONDENT AND SAROJINI
- P12:- TRUE COPY OF IA NO.3761 OF 2014 FILED BY THE PETITIONER BEFORE THE FIRST ADDITIONAL SUB COURT ,ERNAKULAM
- P12(A):- PHOTOGRAPH PRODUCED ALONGWITH EXT P-12

OP(C).NO.1523/2015

P12(B SERIES):- PHOTOGRAPH PRODUCED ALONGWITH EXT P12

P12(C):- PHOTOGRAPH PRODUCED ALONGWITH EXT P12

**P13:- TRUE COPY OF OBJECTION/COUNTER AFFIDAVIT DTD 4/10/2014
FILED BY THE RESPONDENTS 5, 6 AND 7**

**P14:- A TRUE COPY OF THE ORDER DTD 30/1/2015 PASSED BY THE IST
ADDITIONAL SUB COURT, ERNAKULAM IN IA NO.3761 OF 2014, OS NO
572 OF 2009**

**P15:-(SERIES) TRUE COPY OF THE PHOTOGRAPHS PRODUCED ALONGWITH
EXHIBIT P-15 (7 NOS)**

**P16:- TRUE COPY OF THE APPLICATION DATED 8/7/1986 SUBMITTED BY
THE RESPONDENTS 5 AND 6 ALONGWITH 10 OTHERS BEFORE THE
CORPORATION OF COCHIN**

**P17:- TRUE COPY OF THE LETTER NO.EY-EI-1570/86 DATED 16/9/1987
ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER OF THE
CORPORATION OF COCHIN, ZONAL OFFICE, EDAPPALLY TO THE
REVENUE DIVISIONAL OFFICER, FORT COCHIN**

**P18:- TRUE COPY OF THE COMMISSION REPORT DATED 29/7/2009
SUBMITTED BY THE ADVOCATE COMMISSIONER IN IA.NO.5225 OF
2009 IN O.S.NO.572 OF 2009 BEFORE THE HON'BLE SUB COURT.**

RESPONDENT(S)' EXHIBITS

R1(A)- TRUE COPY OF THE AWARD DATED 24/3/1999 IN A.R.C. NO.1/1998

R1(B)- TRUE COPY OF THE JUDGMENT DATED 12/5/2000 IN A.P.NO.163/1999

**R1(C)- TRUE COPY OF THE REPORT SUBMITTED BEFORE THE PANCHAYAT
COMMITTEE BY THE SECOND RESPONDENT**

**R1(D)- TRUE COPY OF THE PROCEEDINGS OF THE ASSISTANT REGISTER OF
THE CO-OPERATIVE SOCIETIES (GENERAL), ALATHUR CONFIRMING
THE SALE.**

**R1(E)- TRUE COPY OF THE JUDGMENT IN O.S.189/04 ON THE FILE OF THE
MUNSIFF'S COURT, ALATHUR**

**R5(A)- TRUE COPY OF THE I.A.NO.5224 OF 2009 IN O.S.NO.572 OF 2009 DATED
27/7/2009 ON THE FILES OF SUB COURT, ERNAKULAM.**

**R5(B)- TRUE COPY OF THE COUNTER AFFIDAVIT DATED 6/8/2009 FILED BY
RESPONDENT NO.5 TO 7 IN I.A.NO.5224 OF 2009**

**R5(C)- TRUE COPY OF THE COUNTER AFFIDAVIT DATED 4/10/2014 IN
I.A.NO.3761 OF 2014**

OP(C).NO.1523/2015

- R5(D)- TRUE COPY OF THE SHOWING THE PRESENT CONDITION OF THE SCHEDULE WAY.
- R5(E)- TRUE COPY OF THE DECREE DATED 22/3/1996 IN O.S.NO.145 OF 1996 ON THE FILES OF PRINCIPAL MUNSIFF'S COURT, ERNAKULAM.
- R5(F)- TRUE COPY OF THE TITLE DEED NO.2963 OF 1979 DATED 8/6/1979 OF S.R.O., EDAPPALLY.
- R5(G)- TRUE COPY OF THE DOCUMENT NO.4510 OF 1984 DATED 22/12/1984 OF S.R.O., EDAPPALLY.

/TRUE COPY/

P.A.TO JUDGE

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K.ABRAHAM MATHEW J.

O.P.(C) No.1523 of 2015

Dated this the 18th day of November, 2015

JUDGMENT

Petitioners the plaintiffs in O.S.No.572 of 2009 on the file of 1st Additional Sub Judge, Ernakulam. The main relief prayed for in the suit is declaration of their right over the way described in the plaint A and schedules. They filed I.A.No.3761 of 2014 to allow them to repair and maintain the way. By Ext.P14 the learned Sub Judge has dismissed it.

2. Heard.

3. Petitioners 6 and 7 purchased plaint C schedule properties from the 5th respondent. The 5th respondent has a case that the way belongs to him and his wife, the 6th respondent. In Ext.P6 sale deed executed by the 5th respondent in favour of petitioners 6 and 7 they have been given a right over the plaint A and B schedule way. The way is described in the schedule to Ext.P6 sale deed. It is an irrevocable licence under Section 60(a) of the Easements Act. The sale deed gives petitioners 6 and 7 the right to draw electric line over the way and to lay pipes along it for water supply. So there cannot be dispute with regard to the nature of the right.

4. Petitioners 6 and 7 have every right to maintain and repair the road if it is not done by respondents 5 and 6 in whom the ownership of the way is vested. Whether the road requires maintenance and repairs is a different question. Respondents 5 and 6 have no right to object to those petitioners maintaining and repairing the road. The learned Sub Judge has not considered the nature of the right of the petitioners 6 and 7. The facts considered by the learned Sub Judge are not material and relevant for the purpose. The impugned order is liable to be set aside.

5. A commissioner will be deputed by the trial court to ascertain whether the road requires maintenance and repairs, and if it is found that it requires maintenance and repairs petitioners 6 and 7 will be allowed do it under the supervision of the commissioner and at the expense of those petitioners.

In the result, this O.P is allowed. Ext.P14 order is set aside. The lower court is directed to appoint a commissioner to ascertain whether the road requires maintenance and repairs and if it requires maintenance and repairs, it shall be ordered to be done under the

supervision of the commissioner. All the expenses shall be met by petitioners 6 and 7. It is made clear that this order will not confer any right on any one or take away the right any one.

**K.ABRAHAM MATHEW
JUDGE**

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