

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

OP(C).No. 1739 of 2015 (O)

IA.NO.868/2015 IN OS 324/2012 OF MUNSIF COURT, HARIPAD DATED 15-06-2015

PETITIONER(S)/PLAINTIFF:

JAYADEVI.S, AGED 37 YEARS,
D/O.SULOCHANA DEVI, KIZHAKKE MANAMPRAATHU VEEDU,
MAHADEVIKAD P.O., MAHADEVIKAD MURI,
KARTHIKAPPALLY VILLAGE. KARTHIKAPPALLY TALUK,
ALAPPUZHA (DT.)-690555. NOW RESIDING AT SAI KRIPA HOUSE NO.II,
MUNESWAR NAGAR, ULLALL ROAD, BANGALORE-560056.

BY ADV. SRI.G.BENO

RESPONDENT(S)/DEFENDANTS:

1. JAYAPRAKASH.K, AGED 42 YEARS,
S/O.LATE KRISHNA PILLAI, KIZHAKKE MANAMPRAATHU VEEDU,
MAHADEVIKAD P.O., MAHADEVIKAD MURI,
KARTHIKAPPALLY VILLAGE. KARTHIKAPPALLY TALUK,
ALAPPUZHA (DT.)- 69055.
2. SULOCHANA DEVI, AGED 76 YEARS,
W/O.LATE KRISHNA PILLAI, KIZHAKKE MANAMPRAATHU VEEDU,
MAHADEVIKAD P.O., MAHADEVIKAD MURI,
KARTHIKAPPALLY VILLAGE, KARTHIKAPPALLY TALUK,
ALAPPUZHA (DT.), 690555.

R1&2 BY ADV. SMT.SADHANA KUMARI ESWARI

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE PLAINT IN OS.NO.324/12.

EXHIBIT-P2: TRUE COPY OF THE ORDER IN I.A.NO.1788/12 DATED 24/5/13.

EXHIBIT-P3: TRUE COPY OF THE COMMISSIONER REPORT DTD 15/12/12 IN EBT-P1.

**EXHIBIT-P4: TRUE COPY OF THE I.A.NO.868/15 DTD 11/06/15 WITH AFFIDAVIT
SEEKING APPOINTMENT OF COMMISSIONER.**

EXHIBIT-P5: TRUE COPY OF THE I.A.NO.869/15 DTD 11/6/15 IN EXBT-P1.

EXHIBIT-P6: TRUE COPY OF THE OBJECTION OF DEFENDANTS IN EXBT-P4.

EXHIBIT-P7: TRUE COPY OF THE OBJECTION OF DEFENDANTS IN EXBT-P5.

**EXHIBIT-P8: TRUE COPY OF THE ORDER OF THE HON'BLE MUNSIF COURT DATED
15/06/15 IN EXBT-P4.**

EXHIBIT-P9: TRUE COPY OF THE ORDER OF DISMISSAL OF EXBT-P1 DTD 15/6/15.

EXHIBIT-P10: TRUE COPY OF THE I.A.NO.885/15 TO RESTORE EXBT-P1.

EXHIBIT-P11: TRUE COPY OF THE ORDER DTD 30.06.2015 IN EXBT-P10.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K.ABRAHAM MATHEW J.

O.P.(C)No.1739 of 2015

Dated this the 18th day of September, 2015

JUDGMENT

Petitioner is the plaintiff in O.S.No.324 of 2012 on the file of the Munsiff, Haripad. The first respondent is the petitioner's brother and the second respondent is the mother. The suit is for declaration of the petitioner's right of way through the property of the respondents. The petitioner was granted a temporary prohibitory injunction on the allegation that the respondents violated it. The petitioner filed Ext P4 application to appoint a Commissioner for local inspection. By Ext P8 order the learned Munsiff has dismissed it.

2. Heard.

3. The ground on which the application of the petitioner was dismissed is that though there is an allegation that the respondents violated the order of injunction she did not file an application to incorporate the relief of mandatory injunction or an application under Order 39 Rule 2A of the Code of Civil Procedure for prosecution of the respondents. It is true that in every case of violation the aggrieved party need not file an application under Order 39 Rule 2A of the Code of Civil Procedure. But unless there is a prayer for incorporation of the relief of mandatory injunction what

purpose will the commission report serve. It becomes a useless exercise. Viewed in this perspective I have no doubt that the learned Munsiff was right in dismissing Ext P4 application.

4. Learned counsel submits that the petitioner will file an application for amendment of the plaint to incorporate the relief of mandatory injunction. Learned counsel for the respondents submits that it has nothing to do with 'C' schedule property. I need not express any opinion about the proposal to file an application for amendment to incorporate the relief of mandatory injunction. If such an application happens to be filed, the learned Munsiff may pass appropriate orders.

In the result, with the above observation, this Original Petition is dismissed.

Sd/-
K.ABRAHAM MATHEW
JUDGE

cms

/True copy/

P.S.to Judge