

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE B.KEMAL PASHA

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYASHTA, 1937

OP(C).No.893 of 2014 (O)

**CMA NO.57/2013 of I ADDITIONAL DISTRICT COURT,THIRUVANANTHAPURAM.
OS NO.1693/2012 of III ADDITIONAL MUNSIF COURT,THIRUVANANTHAPURAM.**

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PETITIONER'S:

- 1. RATHIKUMARI,D/O.RADHAMMA,AGED 46 YEARS,
HAVING RESIDENCE AT 'RADHA NIVAS',
THITTAMANGALAM,KODUNGANNOOR P.O,
VATTIYOORKKAVU,THIRUVANANTHAPURAM-13.**
- 2. VIJIN.V,S/O.RATHIKUMARI,RESIDING AT 'RADHA NIVAS',
THITTAMANGALAM,KODUNGANNOOR P.O,
VATTIYOORKKAVU,THIRUVANANTHAPURAM-13.**
- 3. VIPIN.V,S/O.RATHIKUMARI,RESIDING AT 'RADHA NIVAS',
THITTAMANGALAM,KODUNGANNOOR P.O,
VATTIYOORKKAVU,THIRUVANANTHAPURAM-13.**

**BY ADVS.SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.
SRI.GOVIND PADMANAABHAN**

RESPONDENTS:

**RESHMI.S,W/O.RAJESH,AGED 35 YEARS,SIVAGANGA,
THITTAMANGALAM,KODUNGANNOOR P.O,
THIRUVANANTHAPURAM-695013.**

BY ADV.SRI.L.MOHANAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 11-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

- P1:- A TRUE PHOTOCOPY OF THE PLAINT IN OS NO.1693 OF 212 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF'S COURT, THIRUVANANTHAPURAM.
- P2:- A TRUE PHOTOCOPY OF IA NO.8297 OF 2012 IN OS NO 1693 OF 2012 OF THE COURT 3RD ADDITIONAL MUNSIF'S COURT, THIRUVANANTHAPURAM.
- P3:- A TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT P2 PETITIONER.
- P4:- A TRUE PHOTOCOPY OF IA NO.389 OF 2013 IN OS NO.1693 OF 2012 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF'S COURT, THIRUVANANTHAPURAM.
- P5:- A TRUE PHOTOCOPY OF IA NO 390 OF 2013 IN OS NO.1693 OF 2012 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF'S COURT, THIRUVANANTHAPURAM.
- P6:- A TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE PETITIONERS HEREIN TO IA NO.389 OF 2013 IN OS NO.1693 OF 2012 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF'S COURT, THIRUVANANTHAPURAM.
- P7:- A TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE PETITIONERS HEREIN TO IA NO.390 OF 2013 IN OS NO.1693 OF 2012 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF'S COURT, THIRUVANANTHAPURAM.
- P8:- A TRUE PHOTOCOPY OF THE COMMISSION REPORT DTD 15/11/2012 IN OS NO.1693 OF 2012 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF COURT THIRUVANANTHAPURAM.
- P9:- A TRUE PHOTOCOPY OF THE COMMISSION REPORT DTD 29/11/2013 IN OS NO.1693 OF 2012 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF COURT, THIRUVANANTHAPURAM.
- P10:- A TRUE PHOTOCOPY OF THE COMMON ORDER DTD 4/4/2013 OF THE COURT OF THE 3RD ADDITIONAL MUNSIF COURT, THIRUVANANTHAPURAM IN IA NO.8297 OF 2012 IA NO.389 OF 2013 AND IA NO.390 OF 2013 IN OS NO.1693 OF 2012.
- P11:- A TRUE PHOTOCOPY OF CMA NO 57 OF 2013 BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM.
- P12:- A TRUE COPY OF THE CMA NO.70 OF 2013 BEFORE THE DISTRICT COURT, THIRUVANANTHAPURAM.
- P13:- A TRUE COPY OF THE JUDGMENT DTD 28/10/2013 IN OPC NO.2590 OF 2013 PASSED BY THIS HONOURABLE COURT.

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**P14:- A TRUE COPY OF THE COMMON JUDGMENT DTD 3/3/2014 IN CMA NOS.57
OF 2013 AND 70 OF 2013 OF THE I ADDITIONAL DISTRICT JUDGE,
THIRUVANANTHAPURAM.**

**P15:- THE COPIES OF PHOTOGRAPHS 3 IN NUMBER SHOWING THE PRESENT
STATUS OF PLAINT D SCHEDULE PATHWAY.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

B.KEMAL PASHA, J.

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O.P.(C). No.893 of 2014

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Dated this the 11th day of June, 2015

J U D G M E N T

Plaintiffs, who are the petitioners herein, have filed a suit for perpetual injunction, restraining defendants 1 to 4 from trespassing into the plaint A schedule property. A relief has been sought for by way of perpetual injunction restraining the defendants from widening the existing 4 links width pathway i.e., the D schedule property into an 8 links width pathway by encroaching upon the southern side of the plaint A schedule property. The plaint C schedule property is the property belongs to the 4th defendant. A commission was taken out in the suit and the Commissioner has filed Exhibit P8 report along with a rough sketch. The rough

sketch gives a clear picture regarding the lie of the property. The rough sketch attached to Exhibit P8 shows that at the opening of D schedule pathway, its width is 2.80 mtrs. The Commissioner has marked in the rough sketch the then existing width of the pathway at the southern side of plaint A schedule property as 3.50 mtrs. At the same time, in the rough sketch, it is shown that a jack tree and two coconut trees are there outside the southern boundary (shown as the southern boundary in the rough sketch) of plaint A schedule property. It has also come out that a mahogany tree is also standing there.

2. According to the respondent, the petitioners have deliberately dumped rubbles on the portions of D schedule pathway, thereby reducing the width of the pathway to 1.80 mtrs at the southern side of the plaint A schedule property. The defendants have filed an I.A. for getting those obstructions removed through a temporary mandatory injunction. The court below has allowed the said application through a common order. Challenging the said common

order two CMAs were filed before the District Court, Thiruvananthapuram. Those CMAs were also disposed of by confirming the order passed by the trial court.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. The present challenge is with regard to the order of temporary mandatory injunction passed by the court below. According to the learned counsel for the petitioners, if the said order is implemented it would result in the cutting and removal of age old coconut trees, jack tree and mahogany tree standing at the portion of their property thereby converting that portion of their property also as a road. Let those trees be there. At the same time, the petitioners cannot be permitted to block the pathway by putting rubbles or other materials on the pathway. Let the portion coming between the line of those trees just south to those trees up to the northern boundary of plaint C schedule property for the time being, be cleared. All other obstructions caused on that portion should be removed. It does not mean that the

aforesaid observations should be taken as such in the final disposal of the suit. Let the evidence be taken in the suit. Parties are at liberty to adduce evidence with regard to the actual width of the pathway to which the parties are entitled to claim as per law. The court below shall take an independent view in the matter after evidence.

This Original Petition (Civil) is disposed of accordingly.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/12/6/15