

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

OP(C).No. 2191 of 2015 (O)

**IA.NO.617/2015 IN C.M.A.NO.16/2015 OF SUB COURT, MUVATTUPUZHA.
OS.NO.135/2015 OF MUNSIF COURT, MUVATTUPUZHA.**

PETITIONER/PETITIONER/APPELLANT/RESPONDENT/DEFENDANT:

**P.P.MATHEW, S/O.PAULOSE, AGED 79 YEARS,
RESIDING AT PUKKUNNEL HOUSE,
NERIYAMANGALAM KARA, NERIYAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686691.**

**BY ADVS.SRI.PAUL K.VARGHESE
SMT.A.A.GEETHA**

RESPONDENT(S)/RESPONDENTS/RESPONDENTS/PETITIONERS/PLAINTIFFS.:

- 1. EDIN BEN JACOB, AGED 20 YEARS,
S/O.BENNY JACOB, MARACHERRY PUTHAYATHU HOUSE,
KUTTAMANGALAM KARA, KUTTAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686691.**
- 2. MATHACHAN, S/O.CHACKO, AGED 57 YEARS,
MARACHERRY PUTHAYATHU HOUSE,
KUTTAMANGALAM KARA, KUTTAMANGALAM VILLAGE,
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT-686691.**

**R1 BY ADVS. SRI.VIVEK VARGHESE P.J.
SRI.VARGHESE
SRI.JACOB**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 08-10-2015, ALONG WITH OP(C).NO.2192 OF 2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 2191 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : A TRUE COPY OF THE PLAINT IN OS.NO. 135/2015 OF THE MUNSIFF COURT, MUVATTUPUZHA DATED 6-3-2015.
- P2 : A TRUE COPY OF THE COMMISSION REPORT AS WELL AS SKETCH IN OS.NO. 135/2015 OF MUNSIFF COURT, MUVATTUPUZHA DT.23-3-2015.
- P3 : A TRUE COPY OF COUNTER AFFIDAVIT FILED BY THE RESPONDENTS IN IA.NO. 634/2015 IN OS.NO. 135/2015 OF MUNSIFF COURT MUVATTUPUZHA DT.25-3-2015.
- P4 : A TRUE COPY OF THE COMMISSION REPORT AS WELL AS SKETCH IN OS.NO. 135/2015 OF THE MUNSIFF COURT, MUVATTUPUZHA DT.26-6-2015.
- P5 : A TRUE COPY OF THE PLAINT IN OS.NO. 661/2014 OF MUNSIFF COURT, MUVATTUPUZHA DT.4-12-2014.
- P6 : A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST PETITIONER IN IA.NO.3947/2014 IN OS.NO. 661/2014 DT.9-3-2015.
- P7 : A TRUE COPY OF THE COMMISSION REPORT AS WELL AS SKETCH IN OS.NO. 661/2014 OF MUNSIFF COURT, MUVATTUPUZHA DT.15-12-2014.
- P8 : A TRUE COPY OF THE COMMON ORDER IN IA.NO. 3947/2014 IN OS.NO. 661/2014 AND IA.NO. 634/15 IN OS.NO. 135/15 OF THE MUNSIFF COURT, MUVATTUPUZHA DT.17-7-2015.
- P9 : A TRUE COPY OF THE CMA.NO. 15/2015 OF THE SUB COURT, MUVATTUPUZHA DT.31-7-2015.
- P10 : A TRUE COPY OF THE CMA.NO. 16/15 DT.31-7-2015 THE SUB COURT MUVATTUPUZHA DT.31-7-2015.
- P11 : A TRUE COPY OF THE IA.NO. 616/15 IN CMA.NO. 15/2015 OF THE SUB COURT MUVATTUPUZHA DT.31-7-15.
- P12 : A TRUE COPY OF THE IA.NO. 617/2015 IN CMA.NO. 16/15 OF THE SUB COURT, MUVATTUPUZHA DT.31-7-2015.
- P13 : A TRUE COPY OF THE COMMON ORDER IN IA.NO. 616/15 IN CMA.NO. 15/2015 AND IA 617/2015 IN CMA.NO. 16/2015 OF THE SUB COURT MUVATTUPUZHA DT.13-8-2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K.ABRAHAM MATHEW, J.

O.P.(C). Nos.2191 & 2192 of 2015

Dated this the 8th day of October, 2015

COMMON JUDGMENT

Petitioner is the plaintiff in O.S.No.135 of 2015 and defendant in O.S.No.661 of 2014 on the file of Munsiff Court, Muvattupuzha. The dispute is with regard to the right over the plaintiff B schedule property, O.S.No.135 of 2015 it passes along the northern boundary of the petitioners A schedule property. The respondents have obtained an order of injunction against him in their suit that is O.S.No.661 of 2014. On the other hand, the petitioners I.A for injunction was dismissed. Both these orders are challenged in C.M.A.Nos.15 of 2015 and 16 of 2015 on the file of Sub Court, Muvattupuzha. The learned Sub Judge passed Ext.P13 common order by which she has directed the parties to maintain status quo till the disposal of C.M.A. She also recorded that as the respondents in these Ops have no objection to the petitioners use the B schedule road as foot pathway the petitioners may use it. This is challenged.

2. Heard the learned counsel on both sides.

3. This is to be noted that the direction permitting the petitioners to use the road as a foot pathway is based on a concession of the respondents. In fact, those I.As not disposed of on merits. The term foot pathway is a confusing one. The order cannot be enforced because of

the lack of clarity. In these circumstances, I am inclined to make it clear that the petitioners have every right to use the B schedule way for their ingress and egress. But they shall not take use any transport vehicles.

In the result, these Ops are disposed of with a direction the learned Sub Judge to dispose of the C.M.A within two weeks from the date of receipt or production of a copy of this judgment. It is made clear that the restriction imposed in the use of B schedule by the petitioners is removed. But they will not be entitled to use the way to take any goods vehicles along it. The C.M.A shall be disposed of untrammelled by any of the observations in the impugned order. This order is applicable till the disposal of the C.M.A. The rights and liability of the parties will be decided in the C.M.A.

**K.ABRAHAM MATHEW
JUDGE**

pm