

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

OP(C).No. 2062 of 2014 (O)

IA NO. 536/2014 IN O.S. NO. 310/2014 OF THE THIRUVALLA MUNSIF COURT

PETITIONER :

**MARIAMMA MATHAI
W/O.LATE L MATHAI, VALAYIL HOUSE, AMALLOOR MURI,
MANJADI P. O., KUTTIPPUZHA VILLAGE, THIRUVALLA TALUK**

**BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY**

RESPONDENTS :

**ABRAHAM C.JOSEPH, AGED 42 YEARS,
S/O.C A JOSEPH, CHEKKATTU HOUSE, THADIYOOR P.O.,
THELLIYOOR VILLAGE, MALLAPPALLY TALUK,
PATHANAMTHITTA-680645**

**BY ADV. SRI.DINESH R.SHENOY
BY ADV. SRI.SUJITHKUMAR
BY ADV. SRI.B.PRAMOD,ADVOCATE COMMISSIONER**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 06-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT P1:- TRUE COPY OF THE PLAINT IN IA NO 535/2014 OF DISTRICT COURT, PATHANAMTHITTA DTD 25/4/2014.
- EXT.P2:- TRUE COPY OF INJUNCTION APPLICATION FILED IN EXT P1 DTD 25/4/2014
- EXT.P3:- TRUE COPY OF REPORT EXT P1 DTD 19/5/2014.
- EXT P4:- TRUE COPY OF THE OBJECTION FILED IN EXT P1 DTD 4/7/2014.
- EXT P5:- TRUE COPY OF THE ADVANCE PETITION DTD 28/6/2014.
- EXT P6:- TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT TO EXT P5 DTD 4/1/2014

RESPONDENT(S)' EXHIBITS & ANNEXURES :

- EXT.R(A): COPY OF SALE DEED NO. 915/2009, THIRUVALLA SRO.
- EXT.R(B): COPY OF COMPLAINT DT 22/4/2014 FILED BEFORE THE SUB DIVISIONAL MAGISTRATE, THIRUVALLA.
- EXT.R(C): COPY OF CAVEAT DT 23/4/2014 SERVED ON THIS RESPONDENT.
- EXT.R(D): COPY OF COMPLAINT DT 6/6/2014 SUBMITTED BEFORE THE DISTRICT SUPERINTENDENT OF POLICE (WITH RECEIPT).
- EXT.R(E): COPY OF FIR NO. 1228/2014, JFCM, THIRUVALLA.
- EXT.R(F): PHOTOGRAPHS 8 IN NOS.
- EXT.R(G): COPY OF OBJECTION DT 4/7/2014 FILED IN IA NO. 534/2014 IN OS NO. 310/2014, MUNSIFF COURT, PATHANAMTHITTA.
- EXT.R(H): COPY OF COMMISSION APPLICATION IN NO. 2034/2014 DT 2/7/2014 FILED IN OS NO. 310/2014, MUNSIFF COURT, PATHANAMTHITTA.
- EXT.R(I): COPY OF OBJECTION DT 8/7/2014 IN EXHIBITS R8.
- EXT.R(J): COPY OF WRITTEN STATEMENT FILED BY THIS RESPONDENT IN OS NO. 310/2014, MUNSIFF COURT.
- EXT.R(K): COPY OF THE PETITION SUBMITTED BEFORE THE DISTRICT SUPERINTENDENT ON 11/7/2014.
- EXT.R(L): COPY OF FIR NO. 1503/2014 JFCM, THIRUVALLA DT 25/7/2014.
- EXT.R(M): COPY OF THE COMPLAINT DT 4/9/2014 FILE BEFORE THE SUB INSPECTOR OF POLICE, THIRUVALLA TOGETHER WITH RECEIPT.

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EXT.R(N): COPY OF THE NEW TRESPASS MADE BY PETITIONER AND HER
HENCHMEN ON 3/9/2014 AND 4/9/2014.

ANNEXURE B1: PHOTOGRAPH OF THE WESTERN COMPOUND WALL OF THE
PETITIONER'S SON'S PROPERTY AND THE OLD TARRED ROAD.

//TRUE COPY//

P.S. TO JUDGE

bp

P. BHAVADASAN, J.

O.P.(C). No. 2062 of 2014

Dated this the 6th day of February, 2015.

JUDGMENT

This Original Petition can be disposed of on a short ground.

2. A suit was laid by the petitioner seeking prohibitory injunction to have the defendant restrained from interfering with the alleged pathway which the plaintiff claimed was available to her for having access to her property.

3. It is not in dispute that the property which is now owned by the plaintiff's son is a portion of a larger portion of the property which was once owned by a Company which sold its property in plots. Both the parties purchased properties from the same owner.

4. Along with the suit an I.A. was filed by the plaintiff which is produced as Ext.P2 seeking an interim

injunction against the respondent. A commission was taken out and the commissioner has filed Ext.P3 report. Since no orders were passed on the I.A., it is alleged that the petitioner moved this Court by way of Original Petition and in this Original Petition, this Court deputed a Commissioner to file a report. Based on Ext.P3 report, status quo order was passed by this Court. Later the Commissioner deputed by this Court has filed his report.

5. The respondent resisted the I.A. before the court below and pointed out that there is no such pathway as alleged by the plaintiff and the alleged pathway is in fact a portion of her property.

6. When the matter was taken up, learned counsel appearing for the petitioner submitted that since status quo order has been passed by this Court, retaining that status quo order, the court below may be directed to

dispose of the I.A. filed by the petitioner for interim injunction.

7. Learned counsel appearing for the respondent raised strong objection to the said course being adopted on the ground that if status quo order is retained, that will influence the court below which may persuade the court below to pass an order on the similar lines as this Court had passed a status quo order. Learned counsel undertakes that the respondent will not tamper with the alleged pathway as claimed by the plaintiff and recording that undertaking, the court below may be directed to dispose of the I.A. on merits.

8. The course suggested by the learned counsel for the respondent appears to be a reasonable and just one.

Recording the above undertaking given by the respondent, this Original Petition is disposed of directing the

court below to dispose of Ext.P2 as expeditiously as possible in accordance with law and after hearing both sides, within one month from the date of receipt of a copy of this judgment.

sb.

P. BHAVADASAN,
JUDGE