

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYASHTA, 1937

OP(C).No. 2996 of 2014 (O)

(EA 88/2014 IN EP 135/2011 IN OS 78/2009 of MUNSIF COURT, PAYYANNUR)

PETITIONER/IST RESPONDENT:

THAIVALAPPIL NARAYANAN, AGED 64 YEARS
S/O PAYYANNOOKKARAN KUNHAMBU, KIZHAKKE KOVVAL, KANDOTH
VELLUR AMSOM P.O, KANDOTH, PAYYANNUR VIA.,
KANNUR DISTRICT

BY ADVS.SRI.P.R.SREEJITH
SRI.M.PRAMODH KUMAR

RESPONDENTS/PETITIONER AND 2ND RESPONDENTS:

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1. KULANGARA VIJAYAN, AGED 53 YEARS
S/O KARINCHIRA, KOKKANISSERI, PAYYANNUR
THALIPARAMBA TALUK, KANNUR DISTRICT 670307
 2. KULANGARA SHANTHA, AGED 45 YEARS
W/O RAGHAVAN, KIZHAKKE KOVVAL
KANDOTH, VELLUR AMSOM, P.O KANDOTH
PAYYANNUR VIA, KANNUR DISTRICT 670307

R1 & R2 BY ADV. SRI.M.SASINDRAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE DECREE DATED 30-11-2010 IN O.S NO 78/2009
OF THE MUNSIFF COURT PAYYANNUR.

EXHIBIT P2 : TRUE COPY OF THE EP NO 135/2011 IN OS NO 78/2009 OF THE
MUNSIFF COURT, PAYYANNUR

EXHIBIT P3 : TRUE COPY OF THE PETITIONER'S COUNTER STATEMENT DATED
24-01- 2012 IN EXT P2 EP.

EXHIBIT P4 : TRUE COPY OF THE IST RESPONDENTS AFFIDAVIT IN EA NO 88/2014
IN EP NO 135 OF 2011 OF THE MUNSIFF COURT PAYYANNUR.

EXHIBIT P5 : TRUE COPY OF THE PETITIONER'S COUNTER STATEMENT DATED
28-10-2014 TO THE EXT P4 EA.

EXHIBIT P6 : TRUE COPY OF THE ORDER DATED 04-11-2014 IN EA NO 88/2014 IN
EP NO 135/2011 OF THE MUNSIFF COURT PAYYANNUR

RESPONDENTS' EXHIBITS : NIL

// TRUE COPY //

PA TO JUDGE

K.T.SANKARAN, J.

O.P.(CIVIL) NO.2996 OF 2014 O

Dated this the 10th day of June 2015

JUDGMENT

By the order dated 04.11.2014 in E.A.No.88 of 2014 in E.P. No.135 of 2011, on the file of Munsiff Court, Payyannur, the prayer made by the petitioner in E.P. to amend the E.P. was allowed. That order is under challenge at the instance of the first respondent before the court below.

2. The petitioner filed O.S.No.78 of 2009 against the respondents for a permanent prohibitory injunction. The first respondent was the second defendant and the second respondent was the first defendant in the suit. The second defendant (first respondent) raised a counter claim in respect of a right over a pathway. The trial court disposed of the suit and the counter claim

on 30.11.2010. The suit was dismissed and the counter claim was decreed declaring that the second defendant has perfected easement right by way of prescription over the plaint B schedule pathway. The trial court also passed a decree for mandatory injunction directing the plaintiff to remove the obstruction made by him on the plaint B schedule pathway within one month from the date of decree.

3. E.P. No.5 of 2011 was filed by the second defendant for executing the decree for mandatory injunction. An Amin was deputed on 6.3.2011. The Amin reported that the obstruction was removed. On 9.3.2011, E.P.No.5 of 2011 was closed.

4. Later, the second defendant filed E.P. No.135 of 2011 under Order XXI Rule 32 of Code of Civil Procedure, stating that the pathway was again obstructed by the plaintiff/judgment debtor. The second defendant/decreed holder prayed to issue a warrant against the plaintiff/judgment debtor and to detain him in prison

and also to attach his property.

5. In E.P. No.135 of 2011, the second defendant/deed holder filed E.A. No.88 of 2014 to add a prayer to remove the obstruction from the pathway with the assistance of the Police. That application was allowed by the order impugned in this O.P.

6. In the facts and circumstances of the case and in the interests of justice, the court below thought that the application was liable to be allowed. I do not find any ground to interfere with the order passed by the court below. If it is found that the deed is violated, required remedial measures are to be taken. The court has ample powers to deal with the situation. Even without any application for amendment, the court could pass appropriate orders. By allowing the amendment, no prejudice will be caused to the petitioner/judgment debtor if he has not violated the deed, as contended by him.

7. The learned counsel for the petitioner submitted that the

petitioner is mainly aggrieved by a sentence in the order impugned that “on a perusal of pleadings it is clear that the way as per the decree was obstructed by the respondent”. It is submitted that this sentence would indicate that the court has pre-judged the issue, while allowing the application for amendment. I do not think that the court has arrived at any conclusion that the judgment debtor has obstructed the pathway. What is meant by the sentence mentioned above is that on a perusal of the pleading it is clear that the case of the decree holder is that the judgment debtor obstructed the pathway.

The O.P.(Civil) is dismissed with the above observations.

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K.T.SANKARAN,
JUDGE

// TRUE COPY //

PA TO JUDGE

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