

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

OP(C).No. 3012 of 2014 (O)

(Against the order in I.A.3035/14 in CMA 35/14 dtd. 24.11.14 of ADDL. SUB
COURT, THALASSERY)

PETITIONER:

RAJAN AGED ABOUT 65 YEARS
S/O. PARVATHIAMMA, PENSIONER, KRISHNA NIVAS
CHOKLI AMSON NEDUBRAM DESOM, CHOKKLI - 670 672.

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY
SRI.RAJESH V.NAIR

RESPONDENT:

R.BINDU, AGED 44 YEARS
W/O. RAJEEVAN MASTER, KODATHIL HOUSE, CHALAKKARA,
NEW MAHE - 673 501.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 3012 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1 - A TRUE COPY OF IA 3035/2014 CMA 35/2014 FILED BEFORE THE ADDL. SUB COURT, THALASSERY.
- P2 - A TRUE COPY OF COUNTER FILED BY RESPONDENT IN IA 3035/14 IN CMA 35/2014 BEFORE THE ADDL. SUB COURT, THALASSERY.
- P3 - A TRUE COPY OF CMA 35/2014 FILED BEFORE THE ADDL. SUB COURT, THALASSERY.
- P4 - A TRUE COPY OF IA 954/2014 IN OS NO. 106/2014 FILED BEFORE THE MUNSIFF COURT, THALASSERY.
- P5 - A TRUE COPY OF COUNTER FILED BY RESPONDENT IN IA 954/2014 IN OS 106/2014 FILED BEFORE THE MUNSIFF COURT, THALASSERY.
- P6 - A TRUE COPY OF COMMON ORDER PASSED IN IA 661/14 AND IA 954/14 IN OS 106/14 DT.07/10/14 BY THE MUNSIFF COURT, THALASSERY.
- P7 - A TRUE COPY OF COMMISSIONER REPORT AND PLAN IN OS 7/14 FILED BEFORE THE MUNSIFF COURT, THALASSERY.
- P8 - TRUE TYPED COPY OF ORDER PASSED IN IA NO. 3035/14 IN CMA 35/14, DT. 24.11.14 BY THE ADDL. SUB COURT, THALASSERY.

RESPONDENT(S)' EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.3012 OF 2014

Dated this the 12th day of January, 2015.

J U D G M E N T

Aggrieved by Ext.P8 order dated 24.11.2014 in I.A.No.3035/2014 in CMA No.35/2014 whereby the court below dismissed the said application, the petitioner before the court below has come up with this original petition under Article 227 of the Constitution of India.

2. The petitioner is the plaintiff in O.S.No.106/2014 pending before the Munsiff Court, Thalassery which is a suit for permanent prohibitory injunction. According to the plaintiff, plaint A schedule property belongs to him and plaint B schedule property is a way situated on the western side of A schedule property which is the only means of access to plaint A schedule property. He claims prescriptive right of easement over the same. Alleging that on 21.02.2014, the respondent blocked the way by putting up mud, the petitioner-plaintiff filed the suit. Along with the suit, the petitioner filed two Interlocutory

Applications namely, I.A.No.661/2014 and I.A.No.954/2014 for ad-interim injunction and mandatory injunction respectively.

3. The respondent resisted the petitions. She denied the existence of B schedule way. According to her, there is a 3 feet wide way on the north eastern side of the plaintiff's house and that is through the property of one Balakrishnan who is residing on the north eastern side of the plaint schedule property. According to her, the plaintiff has filed the petitions suppressing the material facts and with the intention of making the way through the property of the defendant. The respondent also denied various allegations against her.

4. Before the trial court, Exts.A1 to A2(b) were marked on the side of the plaintiff. Exts.B1 to B6 were marked on the side of the defendant. Exts.C1 to C3, commission reports and plan, were also marked. The trial court, for reasons mentioned in the order, came to the conclusion that there was no material to show that the alleged B schedule way was in existence at the time of inspection of the Advocate Commissioner and accordingly, the Interlocutory Applications filed by the petitioner were dismissed.

It seems that the petitioner before the trial court carried the matter in appeal as CMA No.35/2014. In the said CMA, he filed an application namely, I.A.No.3035/2014 calling upon the court to issue directions to the Commissioner who has filed a report in O.S.No.7/2014, which is a suit filed by the petitioner along with some other person against the defendant for fixation of boundary, to visit the property again and also to point out that the way was not kept blocked as alleged by the defendant. The court below finding that no such order could be passed, dismissed the application.

5. Assailing the finding of the court below, learned counsel appearing for the petitioner contended that the court below was not justified in dismissing the application. Inviting attention to the counter affidavit filed by the respondent, it is pointed out that the definite stand taken by the respondent was that B schedule pathway was closed one year prior to the proceedings. Learned counsel also went on to point out that the Commissioner appointed in O.S.No.7/2014 for measuring and identifying the property had gone to the property about three or four months

prior to the present suit and there was nothing in the report to show that the way was blocked. That, according to the learned counsel for the petitioner, would belie the present contention of the respondent that the way has been kept blocked for an year back. I.A.No.3035/2014 was filed to depute the Commissioner in O.S.No.7/2014 to visit the property again. According to the learned counsel, by denying an opportunity to the plaintiff to do so, he is prevented from adducing necessary evidence.

6. There is absolutely no basis for the above contention. The contention of the petitioner before the court below was that if the Commissioner in O.S.No.7/2014 visited the property, he would see that the way was not blocked one year back and that fact would be brought to the notice of the Commissioner in the present case. It was not necessary for the Commissioner to visit the property and see if the way was blocked at the relevant time. Further, the court below was justified in coming to the conclusion that the Commissioner in O.S.No.7/2014 would not be compelled to file a report in the present case to show whether the way was blocked or not. Since the petitioner is misconceived, the court

below dismissed the application. There is no ground to interfere with the order passed by the court below.

This original petition is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp