

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

RSA.No. 998 of 2008 (B)

AS 41/2007 of ADDL. DISTRICT COURT, NORTH PARAVUR

OS 370/2004 of MUNSIFF COURT, NORTH PARAVUR

APPELLANT(S)/APPELLANT/PLAINTIFF :

KANAKAMMA, W/O. KUTTAPPAN NAIR,
KANAKA PRABHA, KAITHARAM MURI, KOTTUVALLY
VILLAGE, REP. BY HER POWER OF ATTORNEY HOLDER
KUTTAPPAN NAIR, KANAKA PRABHA, KAITHARAM MURI
KOTTUVALLY VILLAGE.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
ADV.SRI.GEORGE VARGHESE KIZHAKKAMBALAM.

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:-:

1. VALSALA, W/O. KRISHNAN KUTTY,
EDAYATTU PARAMBIL, KAITHARAM MURI, KOTTUVALLY VILLAGE.
2. SURESH, S/O. KRISHNAN KUTTY,
EDAYATTU PARAMBIL, KAITHARAM MURI, KOTTUVALLY VILLAGE.
3. SUDEESH, S/O. KRISHNAN KUTTY, EDAYATTU
PARAMBIL, KAITHARAM MURI, KOTTUVALLY
VILLAGE.

R1-3 BY ADV. SRI.V.V.ASOKAN

R1-3 BY ADV. SMT.RUKHIYABI MOHAMMED KUNHI

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 15-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.S.A. No.998 of 2008

Dated 15th June, 2015.

J U D G M E N T

The plaintiff in a suit for injunction challenges in this Second Appeal the concurrent decisions of the courts below.

2. Plaint A schedule property belongs to the plaintiff. Plaint B schedule property is the way leading to plaint A schedule property. On the eastern side of plaint B schedule property, there exists a canal. An item of property owned by the defendants lies on the western side of plaint B schedule way. The plaintiff had earlier filed a suit as O.S.No.327 of 1989 before the Munsiff Court, North Paravur, seeking a decree of permanent prohibitory injunction in respect of the pathway to plaint A schedule property and the said suit was decreed holding that the width of the pathway is 7 links. The present suit is filed by the plaintiff alleging that in course of time, the width of the pathway has increased to 12 feet and that the defendants are not permitting her to enjoy the entire width of the pathway. The plaint B schedule pathway is shown in the plaint as the pathway having a width of 12 feet.

3. The defendants contested the suit, contending inter alia that in the light of the decision in O.S.No.327 of 1989, the plaintiff is not entitled to the relief sought for in the plaint.

4. The trial court, on an examination of the materials on record, dismissed the suit holding that the suit is barred by *res judicata* and the decision of the trial court was confirmed in appeal. Hence this Second Appeal.

5. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

6. It is beyond dispute that the plaintiff has filed an earlier suit as O.S.No.327 of 1989 against the defendants in respect of the pathway leading to plaint A schedule property. Ext.B2 is the property schedule and Ext.B4 is the judgment in the said case. The boundary description of the pathway in the said suit as also in the present suit is one and the same. Ext.B4 indicates that the said suit was decreed holding that the pathway leading to plaint A schedule property is having a width of 7 links. The case of the plaintiff in the present suit is that by passage of time, a portion of the eastern canal was annexed to the pathway and thus, its width got increased to 12 feet. The

lower appellate court, on an appraisal of the materials on record, found that in so far as the boundary description of the pathway in both the suits is one and the same, the plaintiff cannot be heard to contend that the width of the pathway has increased by passage of time. The lower appellate court also found that even if it is accepted that the width of the pathway has increased by passage of time as claimed by the plaintiff, the plaintiff is not entitled to a decree in respect of the increased width of the pathway as of right, especially when the canal is vested with the concerned Grama panchayath. In addition, the lower appellate court has also agreed with the view taken by the trial court that the suit is barred by *res judicata*. There is no illegality or impropriety in the decision of the courts below. No question of law, much less any substantial question of law arises for consideration in this matter. The Second Appeal is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)