

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

RP.No.882 of 2014

(AGAINST THE JUDGMENT DATED 24-09-2014 IN OP(C) 2805/2013).

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PETITIONERS/PETITIONERS:

1. **BABU,S/O.SOORYA DAS,MADANTHARA VEETIL ,
PALLANA MURI,THRIKKUNNAPUZHA VILLAGE,
ALAPPUZHA DISTRICT,REPRESENTED BY
POWER OF ATTORNEY HOLDER,KHAJOLI,
2ND PETITIONER**
2. **KHAJOLI,W/O.BABU,MADANTHARA VEETIL,
PALLANA MURI,THRIKKUNNAPUZHA VILLAGE,
ALAPPUZHA DISTRICT.**

BY ADV. SRI.M.R.ARUNKUMAR

RESPONDENTS/RESPONDENTS:

1. **BEENA,KAIRALI MANDIRAM,PALLANA MURI,
THRIKKUNNAPUZHA VILLAGE,ALAPPUZHA-690515.**
2. **RAJESWARI @ AMMINI,KAIRALI MANDIRAM,
PALLANA MURI,THRIKKUNNAPUZHA VILLAGE,
ALAPPUZHA-690515.**

BY ADV.SRI.M.K.CHANDRA MOHANDAS

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 05-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

pk

RP.No.882 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A1: COPY OF THE COMMISSION REPORT FILED BY THE ADVOCATE
COMMISSIONER BEFORE THE MUNSIFF'S COURT, HARIPPAD IN
O.S.NO.149/2010 DATED 16.6.2010.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P.BHAVADASAN, J.

R.P. No. 882 of 2014

in

O.P.(C) No. 2805 of 2013

Dated this the 05th day of February, 2015

ORDER

This is a petition for review of the judgment in O.P.(C) No.2805/2013 dated 24.09.2014 whereby this Court declined to interfere with the order of the court below which rejected an application for amendment of the plaint.

2. In the review petition, it is contended that in violation of the order of injunction, the defendants caused obstruction and therefore it became necessary to seek the amendment of the plaint as the act was committed by the defendants during the pendency of the suit.

3. It is pointed out that after the examination of PW1, the defendants put a slab on the pathway causing the obstruction. It was then the amendment application was moved. This vital aspect has been omitted to be noticed by this Court while disposing of the O.P.(C) No. 2805/2013.

4. After having heard the learned counsel for the petitioners and the learned counsel for the respondents, this Court finds no merit in this review petition. If as a matter of fact, the obstruction has been caused by the defendants in violation of the order of injunction, of course, it is trite that without even amendment, if the court, at the time of disposal of the suit, finds that the petitioners are entitled to use the pathway as claimed by them, the court possess ample powers to direct the removal of obstruction. For any act committed during the pendency of the suit, it may not be necessary to amend the plaint. Especially, when it is in violation of interim order of injunction. The court below had noticed while passing the order that when the second defendant was examined as PW1, he deposed that the obstruction was there even when the suit was filed. It is the said fact which persuaded the court below to dismiss the application.

5. As already stated, if the obstruction has been caused during the pendency of the suit, it does not denude the court of the power to pass appropriate orders ensuring the safe use of the pathway in case the plaintiffs succeed. There is no error apparent on the face of the record warranting a review.

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

Any observation made by this Court will not stand in the way of the court below disposing the suit in terms of the evidence adduced before it and strictly in accordance with law.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge