

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

RSA.No. 295 of 2015 ()

AGAINST THE JUDGMENT AND DECREE IN A.S.NO. 42/2010 of SUB COURT, OTTAPPALAM
DATED 21-01-2015

AGAINST THE JUDGMENT AND DECREE IN O.S.NO. 20/2010 of MUNSIF-MAGISTRATE
COURT,PATTAMBI DATED 25-02-2010

APPELLANT(S)/APPELLANT/PLAINTIFF:

CHANDRAN, AGED 60 YEARS, S/O.PANIKKATH AMMUKUTTY AMMA,
RAYIRANELLOOR AMSOM, EDAPALAM DESOM, OTTAPPALAM TALUK,
PALAKKAD DISTRICT - 679 308

BY ADV. SRI.K.P.BALAGOPAL

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:

1. BABY, AGED ABOUT 40 YEARS, S/O.KARIKUNNATH AYYAPPAN,
RAYIRANELLUR AMSOM, EDAPALAM DESOM, OTTAPPALAM TALUK,
PALAKKAD DISTRICT, 679 308.
2. KUTTAN @ JAYAPRAKASH, AGED ABOUT 32 YEARS, S/O.KARIKUNNATH
AYYAPPAN, RAYIRANELLUR AMSOM, EDAPALAM DESOM,
OTTAPPALAM TALUK, PALAKKAD DISTRICT, 679 308.
3. JIJESH, AGED ABOUT 25 YEARS, S/O.KARIKUNNATH
AYYAPPAN, RAYIRANELLUR AMSOM, EDAPALAM DESOM,
OTTAPPALAM TALUK, PALAKKAD DISTRICT, 679 308.
4. AYYAPPAN, AGED ABOUT 70 YEARS, S/O.KAREKUNNATH INNYAPPAN,
RAYIRANELLUR AMSOM, EDAPALAM DESOM,
OTTAPPALAM TALUK, PALAKKAD DISTRICT, 679 308.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.295 of 2015

Dated this the 19th day of March, 2015

JUDGMENT

Plaintiff in O.S.No.20 of 2010 before the Court of Munsiff, Pattambi, who filed a suit seeking prohibitory injunction against the defendants restraining them from demolishing a retention wall constructed by the side of a water channel abutting the plaintiff's property and also from causing any obstruction to the free flow of water through the water channel, is the petitioner. Further, it was also claimed that the defendants should not enter the water channel and change the user of water channel to a footpath.

2. The court below decreed the suit in part. Dissatisfied with the ex parte decree passed by the trial court, the matter was taken up in appeal by the plaintiff before the Sub Court, Ottapalam. After considering the matter in detail, learned Sub Judge dismissed the appeal confirming the decree passed by the lower court. Feeling aggrieved, this second appeal has been preferred.

3. Heard the learned counsel for the appellant and perused the impugned judgments of the courts below. I have carefully gone through the pleadings also.

4. Case of the appellant/plaintiff is that he is the owner of plaint A schedule property. Plaint B schedule water channel runs through the northern side of item No.2 in plaint A schedule. Admittedly, this water channel originates from a small hill called Rayanellur Mala situated near the plaint schedule property. It is evident from the pleadings that it is a natural water channel. The defendants are also persons owning property adjacent to the water channel. The plaintiff has not claimed any exclusive right over the water channel. Rightly, he cannot do so because it is shown as a boundary of his property. It is a natural stream. Learned counsel for the appellant submitted that the injunction decree granted by the trial court, which was confirmed in appeal, is insufficient to keep the water channel in its present condition. In otherwords, it is contended that the defendants are likely to convert the same to a footpath, thereby hindering the use of water channel.

5. On a consideration of the averments in the plaint and the prayers made therein and also the effect of the decree passed by the courts below, I am of the view that the apprehension of the appellant is misplaced. The trial court, in clear terms, restrained the defendants from causing any material alteration to the varuvattichal (water channel) situated on the north-eastern side of the plaint schedule property by a permanent prohibitory injunction. The words 'material alteration' are wide enough to

take in conversion of the water channel to a footpath. Therefore, in case the respondents/defendants do anything against the terms of the decree, the remedy of the appellant is to approach the trial court for execution of the decree under Order XXI Rule 32 CPC. To me, there is no ambiguity in the decree passed by the trial court. Any act which may cause interference or hindrance to the free flow of water in the channel can be termed as violation of the injunction decree passed by the court below. Therefore, I am of the view that the appellant's apprehension is without any basis. No substantial question of law arises for consideration in this case. Hence the appeal is dismissed.

A. HARIPRASAD, JUDGE.

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