

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

RSA.No. 332 of 2015

A.S.NO.369/2009 OF 1ST ADDITIONAL DISTRICT COURT, PALAKKAD

O.S.NO.78/2008 OF PRINCIPAL MUNSIFF COURT, PALAKKAD

APPELLANT(S)/APPELLANTS/PLAINTIFFS :

- 1. CHANDRAN, AGED 54 YEARS, S/O.GOPALAN (LATE),
VADAKODE, ELAPPULLY AMSOM, PALAKKAD.**
- 2. SANTHI, AGED 52 YEARS, W/O.JAGADEESAN,
VADAKODE, ELAPPULLY AMSOM, PALAKKAD.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S)/RESPONDENTS/SUPPL.RESPONDENTS 3 AND 4/DEFENDANTS:

- 1. G.RAMACHANDRAN, AGED 56 YEARS, S/O.GOPALAN(LATE),
MANNAKKATTIL, VENGODI AMSOM, PALAKKAD-678 622.**
- 2. BROJIMOL, AGED ABOUT 32 YEARS,
W/O.LATE SIVADAS, RESIDING AT MANNUKKATTIL,
VENGODI AMSOM DESOM, PALAKKAD-678 622.**
- 3. SAJA, AGED 4 YEARS, D/O.LATE SIVADAS,
RESIDING AT MANNUKKATTIL, VENGODI AMSOM DESOM, PALAKKAD.
(MINOR) REPRESENTED BY GUARDIAN-MOTHER AND NEXT FRIEND
2ND RESPONDENT. (THE 2ND RESPONDENT G.SIVADAS IN THE LOWER
APPELLATE COURT DIED AND RESPONDENTS 2 AND 3 ARE HIS LEGAL
HEIRS) 678 622.**

R1 BY ADV. SRI.JACOB SEBASTIAN(CAVEATOR)

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

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R.S.A.No.332 of 2015.

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Dated this the 25th day of November, 2015.

J U D G M E N T

The plaintiffs in a suit for injunction are the appellants in this second appeal.

2. The plaint A schedule property belongs to the first plaintiff and the plaint B schedule property belongs to the second plaintiff. According to the plaintiffs, plaint C schedule property is a pathway to plaint A and B schedule properties. Plaint C schedule property is described in the suit as a pathway having a length of 200 meters and a width of 3.75 meters. The defendants own properties on the east and west of plaint B schedule property. According to the plaintiffs, defendants have carved out a portion of plaint C schedule pathway and annexed the same to their property. It is also alleged by the plaintiffs that the

defendants had attempted to plant coconut saplings in plaintiff C schedule pathway. According to the plaintiffs, they have a right of easement by necessity through the plaintiff C schedule pathway. The suit was, therefore, filed seeking a decree of permanent prohibitory injunction restraining the defendants from interfering with the user of the plaintiff C schedule pathway to plaintiff A and B schedule properties. The defendants contested the suit. According to them, there is no pathway in existence as described in the plaintiff C schedule. The trial court, on an examination of the evidence on record, decreed the suit in part restraining the defendants from causing any obstruction to the plaintiffs in the matter of using the plaintiff C schedule pathway. However, it was clarified by the trial court that the width of the pathway is only three feet. Aggrieved by the decision of the trial court confining the width of the pathway to three feet, the plaintiffs took up the matter in appeal. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. The plaintiffs who

are aggrieved by the decision of the trial court as confirmed in appeal have thus come up in this second appeal.

3. Heard the learned counsel for the appellants.

4. The dispute between the parties is only as to the width of the plaint C schedule pathway. The questions relating to the width of a pathway are pure questions of fact. The plaintiffs cannot, therefore, challenge the decisions rendered by the courts below as to the width of plaint C schedule pathway in a second appeal filed under Section 100 of the Code of Civil Procedure. That apart, it is seen that the claim of the plaintiffs that the width of the plaint C schedule pathway is 3.75 meters is based on their case that they are using the plaint C schedule pathway for plying tractors. The appellate court found that the materials on record are not sufficient to hold that the entire width of 3.75 meters was being used by the plaintiffs all throughout for access to their respective properties. While rendering the said finding, the appellate court noticed that there is a canal crossing the plaint C schedule pathway and as such, it

is not possible to ply tractors through the entire length of the plaint C schedule pathway. The appellate court also noticed that normally tractors are being taken to the paddy fields through other paddy fields. In the said view of the matter, there is no merit in the second appeal and the same is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.