

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

RSA.No. 492 of 2015

**AGAINST THE JUDGMENT IN AS 18/2014 of I ADDITIONAL DISTRICT COURT,
ERNAKULAM**

**AGAINST THE JUDGMENT IN OS 237/2011 of PRINCIPAL MUNISIFF COURT,
ERNAKULAM**

APPELLANTS/APPELLANTS/PLAINTIFFS:

1. **A.N.ARUN, AGED 54 YEARS, S/O.LATE NATARAJAN,
ONTHIKADU LANE, A.V.M.NIVAS, PUTHIYAKAVU, THRIPIUNITHURA.**
2. **VALLY ARUN, AGED 51 YEARS, W/O.A.N.ARUN,
ONTHIKADU LANE, A.V.M.NIVAS, PUTHIYAKAVU, THRIPIUNITHURA.**

**BY ADVS.SRI.M.T.BALAN
SMT.B.VIJUBALA**

RESPONDENTS/RESPONDENTS/DEFENDANTS:

1. **THANKAM, AGED ABOUT 73 YEARS,
W/O.LATE PIANKILI, ONTHIKADU LANE,
PUTHIYAKAVU,THRIPIUNITHURA-682 301.**
2. **REMA, AGED ABOUT 45 YEARS,
W/O.LATE SAJI, ONTHIKADU LANE,
PUTHIYAKAVU,THRIPIUNITHURA-682 301.**
3. **SUMA, AGED ABOUT 43 YEARS,
W/O.LATE SURA, ONTHIKADU LANE,
PUTHIYAKAVU,THRIPIUNITHURA-682 301.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

A.HARIPRASAD, J.

R.S.A.No.492 of 2015

Dated this the 29th day of May, 2015

J U D G M E N T

Plaintiffs are the appellants in this second appeal. Challenge in the appeal is against the decree and judgment passed in AS.No.18 of 2014 by the learned Additional District Judge, Ernakulam. The suit is one for permanent prohibitory injunction and mandatory injunction. Case shortly stated is that the plaintiffs, who are husband and wife, are the owners in possession of certain properties described in the plaint A and B schedule. They purchased the properties from one Gopalakrishna Menon who obtained the same by virtue of Ext.A2 partition deed.

2. Defendants obtained plaint D schedule property from one Shankara Menon. B schedule property situates on the western side of plaint A and B schedule properties. According to the plaintiffs, the pathway starting from Uralithazham Road is the access to the plaint A and B schedule properties. The said pathway, having a width of 4

feet, is shown as C schedule. C schedule pathway is running through the southern side of plaintiff D schedule of the property and touches the western side of the plaintiff A schedule property. All the plaintiff schedule properties originally belonged to one Kunjunni Menon, who obtained the properties in the year 1119M.E. Subsequently, the properties were partitioned. The pathway described in C schedule is the only access to the plaintiff schedule properties. The defendants are trying to block the access.

3. Defendants filed a written statement contenting that the plaintiff has no right of way through plaintiff C schedule property as claimed. According to them there is no C schedule property and it is only an imagination. It is also submitted that in the partition deed of the year 1976 (Ext.A2), a way is set apart to the parties to the deed. Therefore, the plaintiffs cannot claim any easement of necessity through the C schedule pathway. The defendants are not bound to provide a pathway to the plaintiffs.

4. The parties went to trial. The trial court

examined three witnesses on the side of the plaintiffs and one witnesses on the side of the defendants. Exts.A1 to A4 and Ext.C1(a) are the documents marked.

5. Heard the learned counsel for the appellants.

6. Learned counsel for the appellants contended that the courts below erred in finding that the plaintiffs have an alternative access and therefore, the claim for easement of necessity is not maintainable. It is settled law that for claiming a right of way on the basis of easement of necessity, the plaintiffs should establish that they are in absolute need of the way claimed and they do not have any other access to the property. In other words, they will be land locked if the way claimed by them was not provided. The courts below relied on Ext.A2 partition deed to find that even at the time of severance of the properties in 1976 the way was carved out for ingress and egress for the parties to the partition deed. Admittedly plaintiffs and defendants claim property involved in the same partition deed. The courts below on facts found that there was no attempt made by the

plaintiffs to show that no alternative pathway is available to them. Based on the proved factual settings the courts below dismissed the suit filed by the plaintiffs. On considering the entire matter, I fail to find any substantial question of law in this second appeal. Questions of fact cannot be raked up in a proceeding under Section 100 C.P.C .

In the result, the appeal is found to be devoid of any merit and hence it is dismissed.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge