

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937**

**RSA.No. 721 of 2015**

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**AS 151/2011 OF ADDITIONAL DISTRICT COURT-II(SPECIAL), KOTTAYAM  
DATED 19-01-2015.**

**OS 431/2008 OF PRINCIPAL MUNSIF COURT, KOTTAYAM DATED 07.04.2011.**

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**APPELLANT/APPELLANT/PLAINTIFF:**

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**A.V.REJI @ REJIMON, AGED 40 YEARS,  
S/O.VASU, ANANILAYIL HOUSE, AYARKUNNAM KARA,  
AYARKUNNAM VILLAGE, KOTTAYAM.**

**BY ADVS.SRI.C.A.MAJEED  
SRI.K.H.ASIF  
SRI.KANDAMPULLY RAHUL  
SMT.RAAGA R.RAMALAKSHMI  
SRI.K.J.SHARATH KUMAR**

**RESPONDENT/RESPONDENT/DEFENDANT:**

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**JAMES MATHEW, AGED 35 YEARS,  
S/O.MATHEW, KUNNUMMEL HOUSE,  
NOW RESIDING AT PUTHUMANA HOUSE,  
AYARKUNNAM KARA, AYARKUNNAMVILLAGE,  
KOTTAYAM - 686 564.**

**BY SRI.BECHU KURIAN THOMAS(SENIOR ADVOCATE)**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION  
ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

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**P.B.SURESH KUMAR, J.**

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**R.S.A.No.721 of 2015.**

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Dated this the 18<sup>th</sup> day of September, 2015.

**J U D G M E N T**

The plaintiff in a suit for prohibitory injunction is the appellant.

2. The plaint schedule property is a portion of a larger extent of 30 cents originally held by one Moly Prasad and Rajamma by virtue of Ext.B1 sale deed. There is a public road on the east of the property covered by Ext.B1 sale deed. There was no access to the property covered by Ext.B1 sale deed from the eastern public road. As such, the vendor of the aforesaid persons has purchased a bit of land connecting the property and the eastern public road and the said bit of land was also conveyed to the aforesaid persons for their access to the eastern public road from the said 30 cents of property. After some time, the property covered by Ext.B1 sale deed was partitioned among the owners as per

Ext.A1 partition deed. As per the terms of Ext.A1 partition deed, 15 cents of property lying on the western side was allotted to Moly Prasad and the remaining 15 cents lying on the eastern side was allotted to Rajamma. Rajamma who got 15 cents as per Ext.A1 partition deed settled the said property in favour of her son, the plaintiff as per Ext.A2 settlement deed. Moly Prasad who got 15 cents as per Ext.A1 partition deed sold the property to one Joseph and the defendant had purchased the said property from Joseph as per Ext.B3 sale deed. The plaint schedule property is the property obtained by the plaintiff as per Ext.A2 settlement deed. The case of the plaintiff is that the defendant who has no right to use the plaint schedule property for access to the eastern public road is attempting to use a portion of the plaint schedule property for the said purpose and that therefore he has to be prevented from doing so by a decree of permanent prohibitory injunction. It was alleged that the defendant has an alternate way through the property of one Vijayakumar.

3. The defendant resisted the suit contending that he has a right of easement to the eastern public road through plaint schedule property. He has also raised a counter claim for a declaration of his right of easement by necessity through the southern most portion of the plaint schedule property. The counter claim item No.1 property is the property obtained by the defendant as per Ext.B3 sale deed and counter claim item No.2 property is the portion of the plaint schedule property through which the defendant is claiming the right of easement by necessity.

4. The trial court dismissed the suit and decreed the counter claim holding that the defendant has a right of easement by necessity through counter claim item No.2 property. Though the plaintiff challenged the decision of the trial court in appeal, the appellate court confirmed the decision of the trial court. The plaintiff is aggrieved by the concurrent decisions of the courts below. Hence this Second Appeal.

5. Heard the learned counsel for the appellant as

also the learned Senior Counsel for the respondent, who appeared through caveat.

6. The short question arises for consideration is as to whether the defendant has established a right of easement by necessity over counter claim item No.2 property. The fact that the plaint schedule property and counter claim item No.1 property was held jointly by Rajamma and Moly Prasad as per Ext.B1 sale deed is not in dispute. Ext.B1 sale deed indicates that there was no access to the property covered by the said document from the eastern public road and therefore their vendor had purchased a bit of land connecting the property with the eastern public road and conveyed the said property also to the purchasers as per the said document. The said fact is made mention of in Ext.A1 partition deed as well. There is nothing on record to indicate that the property covered by Ext.B1 sale deed has any other access at the time when the said document was executed. It is, therefore, reasonable to infer that the only access to the property covered by Ext.B1 sale deed was from the eastern public road. As such, when the said property was partitioned among the predecessors of the plaintiff and

defendant, it is evident that the property allotted to the predecessor of the defendant has become land locked. The predecessor of the defendant Moly Prasad who was examined by the plaintiff has stated in cross examination that the only access to the 30 cents of property covered by Ext.B1 sale deed was from the eastern public road and that the access to counter claim item No.1 property is through the plaint schedule property. Further, though the plaintiff contended that there is an access to counter claim item No.1 property through the property of one Vijayakumar, the courts below have concurrently found that the said fact was not established by the plaintiff. It is in the said circumstances, the courts below came to the conclusion that the defendant has established the right of easement by necessity through counter claim item No.2 property. I do not find any reason at all to interfere with the said decisions of the courts below.

7. The learned counsel for the appellant contended that the Commissioner appointed in the suit has not reported the existence of the way described as counter claim item No.2. In so far as it is found that the counter claim item No.1 property and

the plaint schedule property were part of the same tenement and in so far as it is found that counter claim item No.1 property became land locked on account of Ext.A1 partition deed, it is immaterial whether there exists a pathway as claimed through the plaint schedule property. The question considered by the courts below was as to the right of the defendant to use counter claim item No.2 property as a pathway. In that view of the matter, there is no substance in the argument of the learned counsel for the appellant. There is no question of law, much less any substantial question of law, involved in the Second Appeal and the same is, accordingly dismissed. All the interlocutory applications in the appeal are dismissed.

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

**Kvs/-**

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**PA TO JUDGE.**