

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

**PRESENT:**

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

**THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937**

**RSA.No. 730 of 2015 (C)**

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**AGAINST THE JUDGMENT & DECREE IN AS 180/2013  
OF IIIRD ADDL. DISTRICT COURT, KOLLAM DATED 25-02-2015  
AGAINST THE JUDGMENT & DECREE IN OS.NO. 399/2012  
OF PRINCIPAL MUNSIF COURT, KOLLAM DATED 31-10-2013**  
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**APPELLANTS/APPELLANTS/PLAINTIFFS :**

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- 1. PRASANNA, AGED 62,  
D/O.JANAKI, RESIDING AT THUNDIL VEEDU,  
CUTCHERRY P.O. - -691 013  
KAIKULANGARA CHERRY,  
KOLLAM WEST VILLAGE  
KOLLAM TALUK.**
  - 2. ANEEZIA  
AGED 35, D/O.JAYAPALAN, RESIDING AT THUNDIL VEEDU  
CUTCHERRY P.O., -691 013. KAIKULANGARA CHERRY  
KOLLAM WEST VILLAGE, KOLLAM TALUK.**
  - 3. ARUN, AGED 32,  
S/O.JAYAPALAN, RESIDING AT THUNDIL VEEDU  
CUTCHERRY P.O. -691 013. KAIKULANGARA CHERRY  
KOLLAM WEST VILLAGE, KOLLAM TALUK.**

**BY ADVS.SRI.K.K.JOHN  
SRI.ASISH K.JOHN**

**RESPONDENT/RESPONDENT/DEFENDANT :**

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**MOHAN BABU, AGED ABOUT 63  
S/O.HARIDASAN, THODIYIL VEEDU (SHYLAM), M.C.NO.19  
CUTCHERRY P.O., -691 013. KAIKULANGARA CHERRY  
KOLLAM WEST VILLAGE, KOLLAM TALUK.**

**BY ADVS. SRI.SREELAL N.WARRIER  
SRI.B.RAGHUNANDANAN**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD  
ON 03-12-2015, ALONG WITH RSA NO. 1257/2015, THE COURT ON THE SAME  
DAY DELIVERED THE FOLLOWING:**

**Mn**

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

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**R.S.A.No.730 & 1257 of 2015**

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**Dated this the 3<sup>rd</sup> day of December, 2015**

**JUDGMENT**

These appeals are preferred challenging the decision in A.S.No.180 of 2013 on the file of the District Court, Kollam. A.S.No.180 of 2013 was an appeal preferred by the plaintiffs in O.S.No. 399 of 2012 on the file of the Munsiff Court, Kollam challenging the dismissal of the said suit.

2. There are three items of properties in the suit. The plaint A schedule property belongs to the first plaintiff. The plaint B schedule property belongs to plaintiffs 2 and 3. The plaint C schedule property is a pathway lying on the south of the plaint A and B schedule properties. The defendant owns properties on the west of the plaint A and C schedule

properties.

3. According to the plaintiffs, the plaint C schedule pathway is a pathway formed by the predecessors of the first plaintiff and the defendant, contributing portions of the properties owned by them. Ext.A6 is the agreement executed between Haridas, the father of the defendant and Indira, the predecessor of the first plaintiff in connection with the formation of the said pathway. The case of the plaintiffs is that they have a right of easement by grant over plaint C schedule pathway and that the defendant is causing obstructions to them in the matter of using the plaint C schedule pathway. The reliefs claimed in the suit, in the circumstances, was a declaration of the easement right of the plaintiffs over plaint C schedule pathway and consequential injunction. The defendant resisted the suit. According to the defendant, the plaint A and B schedule properties are lying as a contiguous block having access to

the eastern public road and the plaintiffs have no right to use the plaint C schedule pathway. The case of the plaintiffs that they have a right of easement by grant has been emphatically denied by the defendant in the written statement filed by him.

4. The trial court rejected the case of the plaintiffs that they have a right of easement by grant over the plaint C schedule pathway and consequently dismissed the suit. The matter was taken up in appeal by the plaintiffs. The appellate court though confirmed the finding of the trial court that the plaintiffs cannot claim a right of easement by grant over the plaint C schedule pathway, granted to the plaintiffs a decree of permanent prohibitory injunction restraining the defendant from causing obstructions in the matter of using the plaint plaint C schedule pathway.

5. It is seen that immediately after the decision of the trial court, the defendant had closed down the access of the

first plaintiff from the A schedule property to the plaintiff C schedule pathway. According to the plaintiffs, even though the said fact was brought to the notice of the appellate court, appropriate relief in respect of the same has not been granted to them by the appellate court. In other words, according to the plaintiffs, they are unable to enjoy the fruits of the decree passed by the appellate court in their favour. The plaintiffs have, therefore, challenged the decision of the appellate court in R.S.A No.730/2015. According to the defendant, since it was found that the plaintiffs have not established the right of easement by grant claimed by them over plaintiff C schedule pathway, the appellate court acted illegally in granting the relief of injunction in favour of the plaintiffs. The defendant has therefore, challenged the decision of the appellate court in R.S.A No.1257/2015.

6. Heard the learned counsel for the appellants in the

appeals.

7. Ext.A1 is the document by which the first plaintiff is claiming title over plaint A schedule property. It is seen that as per the said document, the first plaintiff has not only acquired title to the plaint A schedule property but also acquired title over the property held by her predecessor Indira which was made use of for forming the plaint C schedule pathway. Likewise, it is not disputed that the defendant owns the remaining property made use of for forming the plaint C schedule pathway. It is in the said circumstances, the appellate court took the view that the plaintiffs are entitled to use the said property for access to plaint A and B schedule properties. As such, it cannot be said that the decision of the appellate court is illegal or incorrect in any manner. The fact that the access of the first plaintiff to the plaint C schedule pathway from the plaint A schedule property has been closed after the decision of the

trial court is not in dispute. The Advocate Commissioner deputed by the appellate court at the instance of the plaintiffs has reported the said fact. It is the duty of the court to mould reliefs to the parties taking into account of the facts and circumstances of the case including the subsequent events. In so far as it is found that the first plaintiff has a right of access to the plaint C schedule pathway and in so far as it is found that said right of access of the first plaintiff has been blocked by the defendant, the appellate court is perfectly justified in granting the decree of prohibitory injunction in favour of the plaintiffs.

8. The learned counsel for the defendant contended that in so far as the case set up by the plaintiffs that they have acquired a right of easement by grant over plaint C schedule pathway was rejected by the courts below, the courts below should have non suited the plaintiffs, for, the right found in favour of the plaintiffs by the appellate court

is not a right pleaded by them. I do not agree. The courts have a duty to extend to the parties the reliefs which they are entitled to even if not asked for.

In the result, R.S.A.No.1257 of 2015 is dismissed and R.S.A No.730/2015 is allowed, granting the first plaintiff a decree of mandatory injunction directing the defendant to remove the obstructions caused to the user of the plaint C schedule pathway within 3 months from the date of receipt of a copy of this judgment. If the obstructions are not removed as directed above, the first plaintiff will be at liberty to remove the obstruction at her expenses through the process of the court and recover the same from the defendant. All the interlocutory applications in the appeals are closed.

**P.B.SURESH KUMAR, JUDGE.**

smm