

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

RSA.No. 883 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 2/2010 of SUB COURT, OTTAPPALAM
DATED 24-06-2015.**

**AGAINST THE JUDGMENT AND DECREE IN OS 196/2003 of MUNSIFF-MAGISTRATE COURT,
MANNARKAD DATED 25-11-2009.**

APPELLANT IN RSA/APPELLANT IN A.S/PLAINTIFF IN SUIT :

**PATHUMMA, AGED 81 YEARS,
W/O.VETTIKALLADI CHERUPARAMBATH DECEASED EASUPPA,
RESIDING AT PULLISSERI AMSOM, DESOM, PULLISSERI P.O.,
KARAKURUSSI, MANNARKKAD TALUK, PIN-678 582.**

**BY ADVS.SRI.S.V.BALAKRISHNA IYER (SENIOR).
SRI.P.B.KRISHNAN.
SRI.P.M.NEELAKANDAN.
SRI.P.B.SUBRAMANYAN.
SRI.SABU GEORGE.
SRI.S.NITHIN (ANCHAL).**

RESPONDENTS IN RSA/RESPONDENTS IN A.S/DEFENDANTS IN SUIT :

- 1. MOIDUPPA,
S/O.VETTIKALLADI KUNHIMAMMU HAJI, AGED 53,
RESIDING AT PULLISSERI AMSOM, DESOM, PULLISSERI P.O.,
KARAKURUSSI, MANNARKKAD TALUK, PIN-678 582.**
- 2. MUHAMMED MASTER,
S/O.VETTIKALLADI KUNHIMAMMU HAJI, AGED 63,
RESIDING AT PULLISSERI AMSOM, DESOM, PULLISSERI P.O.,
KARAKURUSSI, MANNARKKAD TALUK, PIN-678 582.**
- 3. SECRETARY,
KARAKURUSSI GRAMA PANCHAYATH, KARAKURUSSI P.O.,
PIN - 678 595.**

R1 BY ADV. SRI.P.JAYARAM(CAVEATOR)

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.883 of 2015

Dated this the 13th day of August, 2015.

J U D G M E N T

This second appeal is filed by the plaintiff, who lost a suit for permanent prohibitory injunction in the two courts below.

2. Heard the learned Senior Counsel Sri.S.V.Balakrishna Iyer for the appellant and the learned counsel Sri.P.Jayaram for the first respondent/caveator.

3. Brief facts are as follows :

Plaint schedule property was in the possession and enjoyment of plaintiff's (appellant's) husband. He obtained the property by virtue of Ext.A1 of the year 1947. After the death of plaintiff's husband, the plaintiff and other legal heirs effected a partition as per Ext.A2. 'H' schedule in the partition deed was set apart to the plaintiff. Plaint schedule property is item No.1 in 'H'

schedule to Ext.A2. In the partition deed, a right of access to each of the sharers was reserved. According to the plaintiff, pathway situated on the eastern side of the plaint schedule property was reserved exclusively for the family of the plaintiff. Defendants have no right over the said pathway. When they tried to trespass upon the property, the suit was filed. The respondents opposed the suit by contending that the pathway described in the partition deed as eastern boundary of the plaintiff's property is not included in the plaint schedule. It lies outside the property allotted to the plaintiff and it is a pathway used by inhabitants of the locality. The plaintiff's attempt through this suit is to annex that portion of the land through which the pathway passes to her property.

4. Learned Senior Counsel for the appellant contended that the courts below erred in dismissing the suit finding that the

plaintiff failed to prove that the eastern boundary, viz; the pathway, does not belong to her. According to him, the extent of the property now available on ground is much lesser than the property allotted to her by the partition deed. That apart, the existence of a compound wall made of rubbles on the eastern side of the pathway also makes it clear that the pathway is part of the plaint schedule property. Per contra, learned counsel for the first respondent contended that the pathway showed as the boundary to plaint schedule in Ext.A2 partition deed lies outside the limits of the plaint schedule property. The Commissioners, who submitted Exts.C4 and C5 plans have identified the pathway and its starting point from a public road. Therefore, the first respondent would contend that the claim of the plaintiff over that portion of land through which the pathway runs is untenable.

5. The trial court as well as the lower appellate court, after considering the entire evidence and after analysing the probabilities of the case, found that the pathway on the eastern side of the plaint schedule property was not included in the partition deed as it is shown as boundary to the property. This logic cannot be questioned. Further, the facts found by the courts below cannot be disturbed in a second appeal, especially when it cannot be said to be perverse appreciation of evidence. Learned Senior Counsel for the appellant contended that the appellant apprehends trespass into the plaint schedule property lying west of the pathway at the hands of defendants and they may attempt to widen the pathway. Considering the facts and circumstances of the case and the questions involved, I am of the view that the plaintiff has succeeded in proving that property lying west of blue shaded pathway shown in Exts.C4 and C5 plans is in her

possession and the defendants have no legal right to disturb her possession in respect of that land. However, the findings of the court below that the pathway on the eastern side of plaintiff's property, as revealed from Exts.C4 and C5, cannot be treated as part of the plaint schedule property. From the reasonings, I find that the courts below are right in dismissing the suit of the plaintiff. As there is no substantial question of law, I find no reason to interfere with the findings of the courts below on facts.

However, for clarity following direction is made :

Exts.C4 and C5 plan shall form part of the decree of the trial court.

Appeal disposed accordingly.

All pending interlocutory applications will stand dismissed.

Sd/-

**A.HARIPRASAD,
JUDGE.**