

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

RSA.No. 397 of 2014 ()

AGAINST THE JUDGMENT IN AS. NO.358/2009 OF II ADDITIONAL DISTRICT COURT,
KOLLAM DATED 10-07-2013.

AGAINST THE JUDGMENT IN OS. NO.916/2007 OF ADDITIONAL MUNSIF COURT,
KOLLAM DATED 30-10-2009.

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APPELLANT/APPELLANT/PLAINTIFF:

RAMESHAN, S/O.RAGHAVAN,
AGED 64 YEARS, RASH BHAVAN,
MULAVANA, KOLLAM, PIN-691 503.

BY ADVS.SRI.P.MARTIN JOSE,
SRI.P.PRIJITH,
SRI.THOMAS P.KURUVILLA.

RESPONDENTS/RESPONDENTS/DEFENDANTS:

1. SHAJI YOHANNAN, S/O.YOHANAN,
AGED 54 YEARS, PLANTHUNDIL PUTHENVEEDU,
MULAVANA, KOLLAM, PIN-691 503.

2. YOHANAN, AGED 72 YEARS,
PLANTHUNDIL PUTHENVEEDU,
MULAVANA, KOLLAM, PIN-691 503.

BY ADVS. SRI.MANOJ RAMASWAMY,
SMT.SANJANA R.NAIR,
SMT.V.SREEJA,
SRI.T.M.JAFARKHAN.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

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R.S.A.No.397 of 2014.

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Dated this the 16th day of October, 2015.

J U D G M E N T

The plaintiff in the suit is the appellant.

2. The plaintiff is the owner of the plaint A schedule property. There is a public road on the east of the plaint A schedule property. The property of the defendants is situated on the south of the plaint A schedule property. According to the plaintiff, there exists a pathway to the plaint A schedule property from the eastern public road through the southern boundary of the property of the defendants. The pathway claimed by the plaintiff through the property of the defendants is shown in plaint B schedule. The case of the plaintiff is that he has acquired a right of easement by prescription over plaint B schedule pathway and that the defendants are causing obstruction to the user of the said pathway. The defendants contested the

suit. According to them, there is no pathway in existence as claimed by the plaintiff through the property of the defendants. The trial court, on the basis of the materials on record, found that the plaintiff has not made out a case of easement by prescription over any portion of the property of the defendants. Consequently, the suit was dismissed. The plaintiff took up the matter in appeal. The appellate court, on a reappraisal of the materials on record, confirmed the decision of the trial court. The plaintiff who is aggrieved by the concurrent decisions against him has thus come up in this Second Appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

4. As noticed above, the plaintiff is claiming a right of easement by prescription over a portion of the property of the defendants described as a pathway in plaint B schedule. There cannot be any dispute to the fact that a person claiming a right of easement by prescription over the

property of another has to prove that he has been using the property peacefully, openly and as of right without interruption, for more than a period of 20 years. As far as the present case is concerned, there is nothing on record to indicate that the plaintiff has been using the property peacefully, openly and as of right without interruption, for more than a period of 20 years, except the interested testimony of the plaintiff and the witness examined on his side as PW2. The plaintiff has acquired the plaint A schedule property only in the year 1990. The suit was filed in the year 2007. As such, the plaintiff can claim a right of easement over plaint B schedule property only if he is using plaint B schedule property as a pathway in continuation to such user by his predecessors. When a specific question was put to PW2 as to whether she has witnessed any of the predecessors of the plaintiff using plaint B schedule property for access to plaint A schedule property, she pleaded ignorance. Be that as it may, the question as to whether in

a given case, the plaintiff has established a right of easement as claimed by him is a pure question of fact. As noticed above, the courts below have concurrently found that the plaintiff has not established a right of easement through the property of the defendants. The findings rendered by courts below on the said factual issue cannot be challenged in this proceedings under Section 100 of the Code of Civil Procedure. There is no substantial question of law involved in this case. There is, therefore, no merits in the Second Appeal and the same is, accordingly, dismissed.

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

Kvs/-

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PA TO JUDGE.