

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

RSA.No. 709 of 2014

A.S.NO.19/2011 OF ADDITIONAL DISTRICT COURT, NORTH PARAVUR

O.S.NO.680/2007 OF MUNSIF COURT, NORTH PARAVUR

APPELLANT(S)/APPELLANT/DEFENDANTS :

- 1. BABY KUNJAPPAN, AGED 61 YEARS,
W/O.KUNJAPPAN, ALAPPATTU HOUSE, KAITHARAM KARA,
KOTTUVBALLY VILLAGE, KAITHARAM P.O.
ERNAKULAM DISTRICT-683 519.**
- 2. ANILA RADHAKRISHNAN, AGED 48 YEARS,
W/O.RADHAKRISHNAN, PULPRA VEEDU, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.**
- 3. RADHAKRISHNAN, AGED 56 YEARS,
PULPRA VEEDU, KAITHARAM KARA, KOTTUVALLY VILLAGE,
KAITHARAM P.O., ERNAKULAM DISTRICT-683 519.**
- 4. SHEEJA, AGED 38 YEARS,
W/O.AMBROSE, PADATHUPARAMBIL HOUSE, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.**
- 5. BABY, AGED 56 YEARS
W/O.BABU, CHIRATTUKULAM, KAITHARAM KARA
KOTTUVALLY VILLAGE, KAITHARAM P.O.
ERNAKULAM DISTRICT-683 519.**
- 6. KUMARI, AGED 48 YEARS,
W/O.GIRIVASAN, MATTUPURAM CHETTALIN, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.**
- 7. PRIYA, AGED 38 YEARS,
W/O.RAVINDRAN, NADUVILEPARAMBIL HOUSE, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.**

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8. MARY, AGED 71 YEARS,
W/O.DEVASSY, THAIPARAMBIL HOUSE, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.
9. BABY, AGED 63 YEARS,
W/O.THANKAPPAN, KOTTALIL HOUSE, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.
10. SOUMYA, AGED 36 YEARS,
W/O.VINEESH, KURISINGAL HOUSE, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.
11. URVASI, AGED 58 YEARS,
W/O.DEVASSY, KAITHARATH, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.

BY ADVS.SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE
SRI.DESI MATTHAI

RESPONDENT/RESPONDENT/PLAINTIFF:

PADMINI, AGED 64 YEARS,
W/O.BHASKARAN, MADATHIPARAMBIL HOUSE, KAITHARAM KARA,
KOTTUVALLY VILLAGE, KAITHARAM P.O.,
ERNAKULAM DISTRICT-683 519.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Msd.

P.B.SURESH KUMAR, J.

R.S.A. No.709 of 2014

Dated 15th October, 2015.

J U D G M E N T

The defendants in a suit for injunction are the appellants in this appeal.

2. The plaint schedule property measuring 15 cents belongs to the plaintiff as obtained by her as per Ext.A7 sale deed. The case of the plaintiff is that on 26.11.2007, the defendants have formed a way through a portion of the plaint schedule property by demolishing its eastern boundary wall. It is also her case that later on 13.12.2007, defendant Nos.1 to 4 have demolished a further portion of her eastern compound wall and widened the way. It is her further case that on account of the aforesaid acts committed by the defendants, she sustained a loss of Rs.8,000/-. The suit was filed, in the circumstances, seeking a decree of prohibitory injunction

restraining the defendants from trespassing into the plaintiff schedule property and for consequential reliefs. The defendants contested the suit contending mainly that there exists a public way through a portion of the plaintiff schedule property and therefore, the plaintiff is not entitled to the decree sought for. The trial court found that the defendants have failed to establish a right of way through the plaintiff schedule property and consequently, decreed the suit, granting to the plaintiff a decree of permanent prohibitory injunction restraining the defendants from trespassing into the plaintiff schedule property and committing waste therein. The plaintiff was also permitted to restore the demolished portion of the eastern compound wall of her property. The decision of the trial court has been confirmed in appeal. The defendants are aggrieved by the concurrent decisions against them and hence this second appeal.

3. Heard the learned counsel for the appellants.

4. The courts below found that the plaintiff has established title to the plaintiff schedule property. Once the title

of the plaintiff over the plaint schedule property is established, the defendants are not entitled to oppose the grant of the decree sought in the suit unless they are able to establish their right of way through the property of the plaintiff. The defendants have no case that they have an easement right over any portion of the plaint schedule property. On the other hand, the case of the defendants is that there exists a public pathway through the plaint schedule property. I wonder as to how one can claim a public pathway through a private property. Be that as it may, the courts below have concurrently found that the defendants have not established their case that the pathway claimed by them through the plaint schedule property is a public pathway. No evidence of any express or implied surrender of any portion of the plaint schedule property by the plaintiff has been produced. In the said circumstances, the impugned decisions of the courts below are perfectly in order. There is no question of law, much less any substantial question of law, involved in this matter. The second appeal, in the circumstances, is devoid of merits and the same is accordingly

dismissed *in limine*. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)