

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

RSA.No. 747 of 2014

**AS 75/2011 OF DISTRICT COURT, PATHANAMTHITTA DATED 16-07-2013
OS 76/2009 OF MUNSIF'S COURT, PATHANAMTHITTA DATED 30-10-2010**

APPELLANT(S)/PLAINTIFFS:

1. P.C. SIVARAMAN, AGED 65 YEARS,
S/O.P.C.NARAYANAN, USHAS, KOZHENCHERRY MURI,
KOZHENCHERRY VILLAGE.
2. OMANA, AGED 55 YEARS,
W/O.P.C.SIVARAMAN, USHAS, KOZHENCHERRY MURI,
KOZHENCHERRY VILLAGE.
3. RATHEESH, AGED 29 YEARS,
S/O.P.C.SIVARAMAN, USHAS, KOZHENCHERRY MURI,
KOZHENCHERRY VILLAGE.

**BY ADVS.SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS**

RESPONDENT(S)/DEFENDANT:

**LALY BABY, AGED 53 YEARS,
W/O.YOHANNAN BABY, PARANKIMAVUNILKKUNNATHIL
CHURULIKKODU, ELANTHOOR EAST MURI,
KOZHENCHERRY-689 688.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

= = = = =

R.S.A.No.747 of 2014.

= = = = =

Dated this the 29th day of September, 2015.

J U D G M E N T

The defendants in the suit are the appellants.

2. The plaint schedule item No.1 property was part of a larger extent of 61½ cents. The original owner of the said property divided the said 61½ cents into three plots facing north, after providing a pathway having a width of 12 feet on its north. The pathway provided by the original owner for the said 61 ½ cents is plaint schedule item No.2. Among the three plots, the western plot is plaint schedule item No.1 and the same was purchased by the plaintiff as per Ext.A1. The middle plot was purchased by one Bhaskaran. The eastern plot was purchased by the defendants. According to the plaintiff, plaint schedule item

No.2 pathway is the access provided by the vendor of the plaintiff for access to plaint schedule item No.1 property. The case of the plaintiff is that the defendants are preventing the plaintiff from using plaint schedule item No.2 pathway which is the only means of their access to plaint schedule item No.1 property and hence the suit seeking a decree restraining the defendants from causing obstruction to the plaintiff in the matter of using plaint schedule item No.2 pathway. The defendants contended that there is no pathway in existence as described in plaint schedule item No.2. The trial court rejected the contention of the defendants and decreed the suit holding that the plaint schedule item No.2 pathway is in existence and that the defendants have no authority to cause obstructions to the user of the same. The appellate court, on reappraisal of the evidence on record, confirmed the decision of the trial court. The defendants who are aggrieved by the concurrent decisions of the courts below have thus come up in this

Second Appeal.

3. Heard the learned counsel for the appellant.

4. On the basis of the materials on record including the evidence tendered by the vendor of the defendants in respect of the 61½ cents of property referred to by the plaintiff, the courts below concurrently found that the property of the defendants lies on the south of plaintiff schedule item No.2 pathway and that the defendants have no right to cause any obstructions to the user of the same. The learned counsel for the appellants has contended that during the pendency of the suit, the plaintiff has sold her rights and interests in plaintiff schedule item No.1 property to a third party and as such, she has no right to pursue the suit. There is no substance in this contention. Since the plaintiff was the owner in possession of plaintiff schedule item No.1 property at the time of institution of the suit, she has the right to pursue the suit on behalf of her transferee, if at all the property has been transferred. The Second Appeal is

RSA.No.747/2014.

4

devoid of merits and the same is, accordingly, dismissed *in limine*. All the interlocutory applications in the appeal are dismissed.

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

Kvs/-

// true copy //

PA TO JUDGE.