

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

RSA.No. 1140 of 2014

JUDGMENT DATED 24-05-2011 IN AS 288/2008 OF DISTRICT COURT, KOTTAYAM

JUDGMENT DATED 30-08-2008 IN OS 23/2008 OF MUNSIFF COURT, VAIKOM
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APPELLANT(S)/APPELLANT/DEFENDANT:

**KRISHNANKUTTY, AGED 61 YEARS,
S/O.KUNJUKUNJU, RESIDING AT POOVAKKULATHU HOUSE
FROM KUNNEL (H), VALLASHERRY KARA,
KADUTHURUTHY VILLAGE, VAIKOM TALUK,
KOTTAYAM DISTRICT.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN**

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**PRASAD, AGED 31 YEARS,
S/O.KUTTAPPAN, THENGARATHU HOUSE,
VELLASHERRY KARA, KADUTHURUTHY VILLAGE,
VAIKOM TALUK, KOTTAYAM DISTRICT.**

**BY ADVS. SRI.K.C.CHARLES
SRI.M.POLY MATHAI
SMT.NEYA JAMES**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

R.S.A.No.1140 of 2014

Dated this the 1st day of September, 2015

JUDGMENT

The defendant in a suit for injunction is the appellant.

2. The plaint schedule item No.1 property belongs to the plaintiff. The defendant is the owner of the plaint schedule item No.2 property, which is situated on the eastern side of the plaint schedule item No.1 property. The case of the plaintiff is that the defendant is attempting to obstruct the development of his property pretending that there exists a public way through the northern side of the plaint schedule item No.1 property. The suit was therefore filed seeking a decree of permanent prohibitory injunction restraining the defendant from causing obstructions to the development of

plaint schedule item No.1 property. The defendant resisted the suit by filing a written statement. The contention of the defendant is that there exists a public way on the northern side of the plaint schedule item No.1 property and that the plaintiff is putting up a building encroaching upon the public way which is being used by him for access to his property.

3. The trial court found that the defendant has not established that there exists a public way through the northern side of the plaint schedule item No.1 property. Consequently, the suit was decreed. In appeal, on a reappraisal of the evidence on record, the appellate court confirmed the decision of the trial court. The defendant is aggrieved by the said concurrent decisions of the courts below.

4. Heard the learned counsel for the appellant.

5. The only point raised by the learned counsel for the appellant is as to the correctness of the findings of

the courts below that there is no public way on the northern side of the plaint schedule item No.1 property. The said question being a pure question of fact, the correctness of the same cannot be challenged in this Second Appeal filed under Section 100 of the Code of Civil procedure. There is no question of law much less any substantial question of law involved in this matter. The Second Appeal, in the circumstances, is dismissed *in limine*.

P.B.SURESH KUMAR, JUDGE.

smm