

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

RSA.NO. 1276 OF 2014 ()

**AGAINST THE JUDGMENT IN AS.NO. 317/2008 OF ADDITIONAL DISTRICT COURT-IV,
THRISSUR DATED 28.08.2014**

**AGAINST THE JUDGMENT IN OS.NO. 3817/2003 OF ADDITIONAL MUNSIF COURT-III,
THRISSUR DATED 12.06.2008**

APPELLANT/APPELLANT/FIRST DEFENDANT:

**P.A.BAPPUTTY, AGED 66 YEARS,
S/O.ABDUL RAHIMAN, PUTHUVEETIL HOUSE, MUDIKKODE P.O.,
PATTIKKADU**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.R.ARUN KRISHNAN**

**RESPONDENTS/RESPONDENT AND SECOND APPELLANT/PLAINTIFF AND SECOND
DEFENDANT:**

- 1. SAJAN, AGED 55 YEARS,
S/O.CHIRAYATH MANJIYILCHERIYAN, MANAGER,
MAHATMA PRIMARY SCHOOL, PANANCHERY VILLAGE,
THRISSUR TALUK-680 001.**
- 2. MAJEED, AGED 56 YEARS,
S/O.MUHAMMED, PUTHUVEETIL HOUSE, CHATHAKKUDAM
MUDIKKODE, PATTIKKADU-680 001.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

A.HARIPRASAD, J.

R.S.A.No.1276 of 2014

Dated this the 8th day of January, 2015

J U D G M E N T

This second appeal is filed by the defendant, who has been defeated in the courts below. The suit is one for fixation of boundary and for consequential injunction.

2. Averments in the plaint is that the plaint schedule property is a school compound having an extent of 60 cents. A primary aided school is functioning in the property. The plaintiff is the owner of the property and the Manager of the school. According to the plaintiff/1st respondent, the southern and eastern boundaries of the school compound are secured with stone walls. The first defendant/appellant, along with another defendant, is residing on the northern side of the school compound. A compound wall has been constructed in the front side of the school and the compound is secured with gates. The plaintiff wanted to put up compound walls on the northern and western boundaries. When steps were made for constructing compound walls on both the sides, the

defendants raised objections and obstructed the construction. Hence the suit was filed.

3. The appellant/first defendant raised a contention that he has a right of way through the northern side of the plaint property in east west direction. In the written statement he has set up a claim of easement of necessity as well as prescriptive easement.

4. The courts below considered the evidence and found that the claim of easement of necessity and prescriptive easement raised by the appellant had gone unestablished.

5. Heard the learned counsel for the appellant.

6. The learned counsel submitted that the courts below erred in decreeing the suit without considering the fact that the appellant would be land locked if his right of way was not accepted.

7. It is trite law that the claims of easement of necessity and prescriptive easement will not go together. Therefore the learned counsel for the appellant contended that the claim for prescriptive easement was not seriously

pressed. However, his contention is that the courts below did not consider the claim for easement of necessity in the correct perspective. According to the learned counsel for the appellant, after closure of evidence before the trial court, he filed documents with a petition to re-open the evidence. That was not considered by the trial court is the grievance raised by the appellant.

8. On a careful scrutiny of the judgment of the trial court as well as that of the lower appellate court, I find no mention about the filing of application for reception of documents. Had the appellant been aggrieved by the rejection of evidence by the trial court, he would have taken it as a ground before the lower appellate court and that court would have considered the issue. I find nothing mentioned in the judgment of the lower appellate court regarding the improper rejection of evidence. The court below considered the fact that there was no evidence produced to show that the school compound and the property claimed by the appellant were part and parcel of a single tenement at any point of time. In the absence of

establishing severance of the tenements, it is indisputable that the easement of necessity under Section 13 of the Easements Act cannot be claimed. That apart, the courts below found that there is an alternative way available to the appellant for having ingress and egress. The proposition that existence of an alternative access, even if it is inconvenient, will destroy the claim of easement of necessity is beyond any pale of dispute. Therefore, the courts below correctly considered the claim of the appellant and rejected his case. Learned counsel for the appellant placed reliance on the decision of this Court in **Janu v. Lakshmi Amma [1994 (1) KLT 933]**. On going through the facts of this case, it can be seen that the decision can be clearly distinguished. The proposition of law laid down in the above decision that a person purchasing a plot adjoining his own land and having access to the plot through his land cannot claim a way of necessity over his vendor's land of which the plot formed a part is not applicable to this case. I find no substantial question of law arising in this case for admitting the

appeal as the rule laid down in Section 100 C.P.C. is not satisfied. Therefore, I find no merit in the appeal.

In the result this appeal is dismissed. There is no order as to costs.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge