

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 12078 of 2010 (H)

PETITIONER(S):

**JOSEPH THOMAS, S/O.THOMAS,
AGED 66 YEARS, KANDATHIL PARAMBIL,
PACHA MURI, EDATHUA VILLAGE.**

**BY ADVS.SRI.K.S.HARIHARAPUTHRAN,
SRI.GEORGE MATHEW.**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE SUB DIVISIONAL MAGISTRATE,
ALAPPUZHA.**
- 3. THE PUNCHA SPECIAL OFFICER, ALAPPUZHA.**
- 4. T.T. FRANCIS, S/O.THOMAS,
AGED ABOUT 81 YEARS, THATTUPURACKAL VEETTIL,
PACHA MURI, CHEKIDIKADU P.O., EDATHUA.**

**R1 TO R3 BY SR. GOVT. PLEADER SRI.K.K. SAIDALAVI.
R4 BY ADV. SRI.P.J.JOSEPH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE PARTITION DEED NO.1039/1985 DATED 10/05/1985 OF THE SRO AMBALAPPUZHA.
- EXT.P2 COPY OF THE TAX RECEIPT DATED 04/05/2009 ISSUED BY THE VILLAGE OFFICER, EDATHUA VILLAGE.
- EXT.P3 COPY OF THE PLAINT IN O.S. NO.201/2010 FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT, ALAPPUZHA DATED 16/03/2010.
- EXT.P4 COPY OF THE ORDER DATED 17/03/2010 IN I.A. NO.1942/2010 IN OS. NO.201/2010 PASSED BY THE MUNSIFF COURT, ALAPPUZHA.
- EXT.P5 COPY OF THE MAHAZAR PREPARED BY THE COMMISSIONER IN O.S. NO.201/2010 BEFORE THE PRINCIPAL MUNSIFF COURT, ALAPPUZHA DATED 29/03/2010.
- EXT.P5A COPY OF THE ROUGH SKETCH PREPARED BY THE ADVOCATE COMMISSIONER.
- EXT.P6 COPY OF THE LETTER SENT BY THE 3RD RESPONDENT TO THE PETITIONER DATED 22/03/2010.
- EXT.P7 COPY OF THE REPORT DATED 25/03/2010 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXT.P8 COPY OF THE PETITION SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 2ND RESPONDENT DATED 19/03/2010.
- EXT.P9 COPY OF THE JOINT STATEMENT DATED 26/03/2010 SUBMITTED BEFORE THE 2ND RESPONDENT.
- EXT.P10 COPY OF THE PETITION DATED 26/03/2010 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P11 COPY OF THE NOTICE IN MC. NO.21/2010 DATED 25/03/2010 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS:-

- EXT.R4(1) REPORT NO.100/10 DATED 12/03/2010 SUBMITTED BY VILLAGE OFFICER, EDATHUA.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 12078 of 2010

Dated this the 3rd day of September, 2015

J U D G M E N T

Under challenge in this writ petition are Exts.P6 & P11 orders, which the 4th respondent had obtained from the 2nd respondent.

2. The petitioner is the owner in possession of the property covered by Exts.P1 & P2. He alleges that there is a pathway along the northern side of the property of the petitioner having a width of 3-4 feet. The 4th respondent is having property on far east of the petitioner's property, having road frontage on the east. According to the petitioner, the width of the pathway as it reaches the northern side of the 4th respondent is only 1-1½ feet. When the 4th respondent attempted to increase the width of the pathway, the petitioner filed Ext.P3 suit and obtained Ext.P4 order of injunction. Ext.P5 series is the commission report etc. in Ext.P3 suit.

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The petitioner alleges that suppressing all these material facts, the 4th respondent managed to obtain Exts.P6 & P11 orders behind the back of the petitioner influencing respondents 2 & 3. He further alleges that respondents 2 & 3 are going to implement the order illegally. Hence, this writ petition.

3. In the counter affidavit filed by the 2nd respondent, it is contended as follows;

The 4th respondent filed a petition alleging that the paddy harvested from his field in Thenkara Pancha Padasekharam could not be transported as the pathway used for the purpose was blocked by the petitioner by unloading bricks on the said way. The parties were heard on 19.03.2010 and they agreed for settlement and an agreement was signed by both of them. In the agreement, it was stated that the petitioner would give all assistance for the conveyance of the harvested paddy and the 4th respondent would

meet the expenses in this regard.

Later on 24.03.2010, the 4th respondent filed a petition stating that the petitioner was acting against the agreement arrived at on 19.03.2010. The petition was placed for orders. The petitioner, vide an application dated 27.03.2010, stated that the 4th respondent was not cooperating with him as per the agreement signed on 19.03.2010. In the circumstances, an order under Section 133 was issued on 25.03.2010 and both the parties were heard on 29.03.2010. One more agreement was signed by both the parties stating that the harvested paddy would be conveyed to the carriage at the cost of the petitioner and the pathway would not be blocked provided no damage is done to the bricks placed and the trees standing by the side of the pathway. It is at this juncture, the petitioner filed this writ petition. The Village Officer's report

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shows that the gravel spread pathway has 3 meters' width throughout.

According to them, as the matter required urgent action, under Cr.PC 133, a preliminary order was issued in MC No.21/2010 on 25.03.2010 for removing the obstruction on the pathway caused by the accumulation of bricks before 29.03.2010. According to the 2nd respondent, the said order is in accordance with law and the 2nd respondent is empowered to exercise this power in case of extreme exigencies like this.

The width of the pathway has been reduced to 1 meter by keeping the bricks within a diameter of two meters preventing movement of vehicles. Ext.P11 was issued since the petitioner has not complied with agreement dated 19.03.2010, which is marked as Ext.P9. According to the the 2nd respondent, the impugned

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orders are in accordance with law and in accordance with the principles of natural justice.

4. In the counter affidavit filed by the 4th respondent, it is contended that the 4th respondent never tried to increase the width of the pathway. However, he had filed Ext.P8 representation before the 2nd respondent and another representation before the 3rd respondent for orders to remove the obstruction caused by the petitioner on the pathway denying access of vehicles to the 4th respondent's property to move agricultural products. He justified the impugned orders and contended that it was quite necessary to meet the ends of justice.

5. Arguments have been heard.

6. Admittedly, there was a civil suit, in which the 4th respondent remained ex parte. The petitioner has obtained an injunction against the 4th respondent from widening the existing the pathway trespassing into the property covered by Ext.P1. In that case, a commission was deputed, who filed Ext.P5 report and Ext.P5(a)

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sketch. The case of the 4th respondent before respondents 2 & 3 was that the pathway was obstructed by placing bricks on the pathway. By Ext.P6 order dated 22.03.2010, the 3rd respondent directed the petitioner to remove the bricks. The petitioner relies on Ext.P7 report submitted by the Convenor of the Padasekharam, in which it is stated that the allegation of obstruction of pathway is wrong and incorrect.

7. Evidently, and admittedly too, the proceedings were initiated by the Sub Divisional Magistrate in exercise of powers conferred under Section 133 of the Code of Criminal Procedure. The power conferred on the Sub Divisional Magistrate under Section 133 is to abate public nuisance or to remove obstructions on a public pathway. To classify a pathway as public, it has to originate from a public place and end in a public place. Even according to the 4th respondent, the so called pathway ends in the property of the 4th respondent. Therefore, the pathway in dispute cannot be reckoned as

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a public pathway. Even assuming that the case projected by the 4th respondent is true, it can only be an obstruction against the enjoyment of an easement right, which could be remedied only through a civil suit before a competent civil forum. Therefore, Ext.P11 is incompetent; and hence, the same has to be interfered with.

Therefore, the writ petition is disposed of quashing Exts.P6 & P11. However, it is hereby made clear that the existing state of affairs regarding the width of the pathway on the northern side of the petitioner's property shall continue as it is. None of the parties shall have any right to reduce the width of the said pathway. If there is any action by any of the parties to reduce the width of the pathway, it shall be open to the parties to approach a competent civil court to get the grievance redressed in accordance with law.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-