

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 10151 of 2015 (T)

PETITIONER:

**SREEKALA
D/O.GOPINATHA PILLAI, PAIKKATTU HOUSE, NADUVILE MURI
CHUNAKKARA, MAVELIKKARA TALUK.**

**BY ADVS.SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN**

RESPONDENTS:

- 1. THE ASST.SUPERINTENDENT OF POLICE
CHENGANNUR, PIN-689121.**
- 2. THE CIRCLE INSPECTOR OF POLICE,
MAVELIKKARA-690101.**
- 3. SURESH BABU,
S/O.GOPINATHAPILLAI, THEKKARETHU KALLIMEL MURI
VETTIYAR VILLAGE, MAVELIKKARA, PIN-690101.**
- 4. THE S.I.OF POLICE,
MAVELIKARA, PIN-690101.**

***Addl.5. RENUKA DEVI
W/O.RAJAPPAN PILLAI, RAJNANDAM, KOMALLOOR PO.
CHARUMMOODU, ALAPPUZHA DISTRICT.**

***ADDL.R5 IMPEADED AS PER
ORDER DATED 07.08.2015 IN IA 11418/15.**

**R3 BY ADV. SRI.K.S.SIVA KUMAR
R3 BY ADV. SRI.C.B.SREEKUMAR
ADDL.R5 BY ADV. SRI.K.N.RADHAKRISHNAN(THIRUVALLA)
BY SR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 10151 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1 TRUE COPY OF THE ORDER DATED 17.12.2011 IN CMA 37/2010 OF
ADDL.DISTRICT COURT,MAVELIKKARA**

**EXT.P2 TRUE COPY OF THE JUDGMENT DATED 22.8.2012 IN O.S.287/2009 OF
MUNSIFF COURT,MAVELIKKARA**

EXT.P3 TRUE COPY OF THE PLAN APPENDED TO THE DECREE IN O.S.287/2009

**EXT.P4 TRUE COPY OF THE PETITION DATED 5.1.2015 SUBMITTED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT**

EXT.P4A ENGLISH TRANSLATION OF EXT.P4

**EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 12.2.2015 SUBMITTED BY THE
PETITIONER'S FATHER BEFORE THE 1ST RESPONDENT**

EXT.P5A ENGLISH TRANSLATION OF EXT.P5.

RESPONDENT(S)' EXHIBITS NIL

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PS to Judge

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.P. (C) No. 10151 of 2015

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Dated this, the 6th day of August, 2015

J U D G M E N T

Shaffique, J.

Petitioner is the third defendant in OS NO.287/2009, which was decreed by the Munsiff Court, Mavelikkara on 22/8/2012. In the judgment at para 21, it is stated that “It is made clear that the plaintiff shall have no right to cause any obstruction to the 3rd defendant from drawing water from the well in plaint item No.3 property”. Further, suit has been decreed in favour of the plaintiff as well stating that the plaintiff shall have right of easement by grant over the well and that the 3rd defendant was also restrained by a permanent injunction from causing any obstruction to the plaintiff for using the well also.

2. Petitioner submits that despite the observation in the judgment, the 3rd respondent herein, who is the plaintiff in the said suit, has prevented the petitioner from using the well by closing the same with an iron grill and locking it. Though the

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petitioner submitted a complaint to the police, no action had been taken by the police and therefore, petitioner has approached this Court.

3. Counter affidavit is filed by the 3rd respondent *inter alia* stating that the right of user of the well as well as the pathway leading to the well is reserved to the family members of the plaintiff whereas the petitioner has only a right to use the well and on the strength of just an observation in the judgment, it cannot create any right in favour of the petitioner.

4. Additional 5th respondent has been impleaded as per order in IA No.11418/2015. She has filed a counter affidavit *inter alia* stating that the suit was a collusive arrangement between the parties and no rights could have flowed on the basis of the said judgment in favour of the petitioner. Further, it is stated that the additional 5th respondent has already taken steps to file a suit challenging the aforesaid judgment and to establish her right in respect of the aforesaid well.

5. Having regard to the aforesaid factual situation, though not in the form of a decree, there is an observation by the learned Munsiff in OS No.287/2009 that the petitioner has a right

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to use the well in question. Under such circumstances, if there is any obstruction from the part of the 3rd respondent, who is the plaintiff in the suit, definitely on the complaint of the petitioner, police will have to interfere and ensure that the orders passed by the Court is not being violated.

In the result, this writ petition is disposed of directing the 4th respondent to ensure that the petitioner is permitted to use the well as directed in the judgment in OS No.287/2009 by breaking open the lock, if necessary. However, this judgment will be subject to any further orders that might be passed by the civil court in any proceedings that may be initiated by the parties.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge