

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

W.P.(C).No. 14938 of 2013 (N)

PETITIONER(S):

**MARIA LUCY.P.R.,
THERUVIL HOUSE, EDAKOCHI.**

BY ADV. SRI.P.P.JACOB

RESPONDENT(S):

**THE CORPORATION OF KOCHI,
OFFICE OF THE CORPORATION OF KOCHI, ERNAKULAM
PIN-682011, REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI.K.P.JUSTINE(KARIPAT)SC, COCHIN CORPORATION

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : THE PHOTOCOPY OF THE COMMON JUDGMENT IN O.S. 549/93 AND O.S. 131/94 OF THE PRINCIPAL MUNSIFF'S COURT, KOCHI DATED 27-6-95.
- EXT.P2 : TRUE PHOTOCOPY OF THE DECREE IN O.S. 549/93 OF PRINCIPAL MUNSIFF'S COURT, KOCHI DATED 27-6-95.
- EXT.P2(a) : LEGIBLE COPY OF THE JUDGMENT IN O.S.NO.549/93 & O.S.NO.131/94 DATED 27.06.95.

RESPONDENT(S)' EXHIBITS

- EXT.R(1) : TRUE COPY OF SKETCH.

//True Copy//

P.A. To Judge

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RAJA VIJAYARAGHAVAN V, J.

W.P.(C).No.14938 of 2013

Dated this the 11th day of December, 2015

J U D G M E N T

In this Writ Petition, the petitioner, on the strength of the judgment and decree of the Civil Court which has attained finality, challenges the action of the respondent Corporation, in blocking / obstructing the user of a pathway, which incidentally is the subject matter of the aforesaid suit.

2. I have heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel for the respondent Corporation.

3. The learned counsel appearing for the petitioner banks on Ext.P1 which is the judgment dated 27.06.1995 in O.S.No.549/1993 and O.S.No.131/1994 of the Principal Munsiff's Court, Kochi and also Ext.P2 decree passed

consequent thereto. The petitioner's husband James was the plaintiff in the said suit and admittedly, the property involved in the suit is the subject matter in the instant writ petition as well. As per the judgment and decree, the learned Munsiff had concluded on the strength of evidence let in, that the plaintiff's husband has been using the plaint schedule property for more than 20 years as of right, uninterruptedly, peaceably and openly and on facts and law, a decree was granted declaring the right of easement by prescription in respect of the plaint schedule pathway. The learned Munsiff also granted a decree of permanent prohibitory injunction restraining the defendant, who is none other than the respondent herein, from putting up a compound wall, blocking the pathway scheduled in the plaint and from obstructing the plaintiff in the suit from using the plaint schedule pathway. It is admitted by both sides that the aforesaid judgment and decree has become final. Ext.P2 is the decree passed by the learned Munsiff in

the said suit. In the said decree, the pathway has been described in detail.

4. The learned counsel for the petitioner submits that the petitioner has been enjoying the fruits of the decree since the date of judgment and the same has attained finality. The grievance now raised is that, on 11.06.2013, the respondent through its employees and workers had come to the premises of the petitioner and has attempted to block the user of the pathway violating the judgment and decree of the Munsiff Court. According to the learned counsel, the respondents, being a creature of statute is bound to comply with the judgment and orders passed by the Civil Court. His further submission is that the Right to Life guaranteed under Article 21 of the Constitution of India would include the right to live peacefully and without unlawful interference with the property rights by statutory authorities. In elaboration, it is submitted that in case of

encroachment of rights violating the sanctions of law, this Court will be justified in coming to the protection of the citizen under Article 226 of the Constitution of India.

5. The respondent has filed a counter controverting the contentions of the petitioner. In the counter affidavit filed, there is absolutely no mention about the implications of the judgment and decree, which the respondents, necessarily, are bound to comply.

6. After having heard the learned counsel for the petitioner and the respondent and after having gone through the exhibits produced along with the Writ Petition, I am of the view that as long as Ext.P1 judgment and Ext.P2 decree are in force, the respondents cannot be permitted to violate the same and obstruct the user of the pathway and also the prescriptive rights of easement which stands crystallized by virtue of Exts.P1 and P2.

In view of the above, the Writ petition is allowed and the respondent is directed not to violate the terms of Ext. P1 judgment dated 27.6.1995 in O.S.No.549/1993 and O.S.No.131/1994 of the Principal Munsiff's Court Kochi and Ext.P2 decree in the aforesaid suit as long as the same is not set aside or varied.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge