

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

WP(C).No. 16589 of 2015 (W)

PETITIONER:

**A.SHERLY, AGED 52, W/O. LATE JOSE,
VAZHAVILA VEEDU, SINGARATHOPPE,
ANJENGO P.O., CHIRAYINKEEZH DESOM,
SARKARA VILLAGE, CHIRAYINKEEZH TALUK,
THIRUVANANTHAPURAM, PIN - 695 309,
NOW RESIDING AT BLOOM DALE, MARKET ROAD,
ERAVIPURAM P.O., KOLLAM DISTRICT, PIN- 691 011.**

**BY ADVS.SRI.P.VISWANATHAN
SRI.PRAMOD KOCHUTHOMMEN.E.
SRI.SUNIL N.SHENOI**

RESPONDENT(S):

- 1. DEPUTY SUPERINTENDENT OF POLICE,
ATTINGAL, TRIVANDRUM DISTRICT, PIN - 695 101.**
- 2. SUB INSPECTOR OF POLICE,
ANJENGO POLICE STATION, ANJENGO P.O.,
TRIVANDRUM DISTRICT, PIN -695 309.**
- 3. JOHNSON @ JIJI, AGED 50, S/O.J.K. ABEL,
VAZHAVILA VEEDU, SINGARATHOPPE,
ANJENGO P.O., CHIRAYINKEEZH DESOM, SARKARA VILAGE,
CHIRAYINKEEZH TALUK, TRIVANDRUM DISTRICT, PIN - 695 309.**

**R1 & R2 BY SENIOR GOVT. PLEADER SRI.C.R.SYAMKUMAR
R3 BY ADV. SRI.A.P.SUBHASH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT-P1- A TRUE PHOTOCOPY OF THE DECREE DATED 31/03/2009 PASSED BY THE SUB COURT, ATTINGAL IN O.S 19/2002 & ENGLISH TRANSLATION PRODUCED HEREWITH.
- EXHIBIT-P2- A TRUE PHOTOCOPY OF THE DECREE DATED 31/01/2013 PASSED BY THE DISTRICT COURT, TRIVANDRUM IN A.S 120/2009.
- EXHIBIT-P3- A TRUE PHOTOCOPY OF JUDGMENT DATED 11/11/2013 PASSED BY THIS HON'BLE COURT IN R.S.A 984/2013.
- EXHIBIT-P4- A TRUE COPY OF THE MEMO DATED 15/11/2004 IN E.P 16/2013 IN O.S 19/2002.
- EXT-P4(A)- TRUE ENGLISH TRANSLATION OF EXHIBIT-P4.
- EXHIBIT-P5- THE TRUE COPY OF THE COMPLAINT DATED 18/05/2015 SENT TO THE 1ST RESPONDENT.
- EXT-P5(A)- TRUE ENGLISH TRANSLATION OF EXHIBIT-P5.
- EXHIBIT-P6- THE PHOTOCOPY OF THE ACKNOWLEDGMENT CARD BY THE 1ST RESPONDENT.
- EXHIBIT-P7- THE TRUE COPY OF THE COMPLAINT DATED 18/05/2015 SENT TO THE 1ST RESPONDENT.
- EXT-P7(A)- TRUE ENGLISH TRANSLATION OF EXHIBIT-P7.
- EXHIBIT-P8- THE PHOTOCOPY OF THE ACKNOWLEDGMENT CARD BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:

- EXT.R3(A) : TRUE COPY OF JUDGMENT DATED 31.1.2013 IN A.S.NO.120/2009 ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE, THIRUVANANTHAPURAM.
- EXT.R3(B) : TRUE COPY OF BASIC TAX RECEIPT DATED 16.2.2015.
- EXT.R3(B1) : TRUE ENGLISH TRANSLATION OF EXHIBIT R3(B1).
- EXT.R3(C) : TRUE COPY OF THE F.I.R HAVING NO.345/2014 DATED 20.6.2014.
- EXT.R3(C1) : TRUE ENGLISH TRANSLATION OF EXHIBIT R3(C).
- EXT.R3(D) : TRUE COPY OF RELEVANT PAGE OF MATHRUBHOOMI DAILY DATED 23.6.2014.
- EXT.R3(D1) : TRUE ENGLISH TRANSLATION OF EXHIBIT R3(D).

/TRUE COPY/

P.S. TO JUDGE

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

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W.P.C.No.16589 of 2015

Dated this the 22nd day of June 2015

J U D G M E N T

Shaffique, J

Petitioner has approached this Court seeking police protection.

2. It is alleged that the petitioner has obtained a decree in O.S.No.19/2002 by which the Sub Court, Attingal has declared right over plaint A and B schedule property in favour of plaintiffs 1 and 2 of which the petitioner is the first plaintiff. Further, plaintiffs were permitted to recover possession of the property from the defendants and they were directed to surrender the same in favour of the plaintiffs. However, the claim for declaration of easement by prescription in respect of the pathway has been disallowed. According to the petitioner, the aforesaid decree had become final as it is confirmed by this Court in R.S.A.No.984/2013. Thereafter, execution petition was filed

and in the meantime by Ext.P4 memo dated 15/11/2014, the judgment debtor had handed over the residential house ('A' schedule property) to the decree holder. Complaint of the petitioner is that even thereafter, when attempts were made to repair the building by her workmen, 3rd respondent and their men had created obstruction and had manhandled the workers. Complaints were filed before the police for necessary police protection and since no action has been taken in the matter, petitioner has approached this Court.

3. Counter affidavit has been filed by the 3rd respondent inter alia stating that they had not created any obstruction to the petitioner enjoying her property whereas it is the petitioner and her men who had created law and order situation and a crime has been registered by the police as Crime No.345/2014 of Nedumangadu police station which has been charge sheeted and final report has already been filed. Further it is submitted that the intention of the petitioner is to use the respondent's property as a pathway

which was denied by virtue of the said decree which has become final.

4. Learned counsel for the petitioner would further submit that it is after the alleged crime that possession has been handed over to the petitioner and the incident narrated by the petitioner happened subsequent to the taking possession of the plaint 'A' schedule property.

5. The learned Government Pleader, on instructions, would submit that crime has been registered on the basis of the complaint given by the 3rd respondent and there is a counter case also pending as crime No.517/2014 which is under investigation.

6. Having regard to the aforesaid factual issues, it is clear that the petitioner has taken possession of the 'A' schedule property in terms with the decree and 3rd respondent cannot have any right to interfere with the enjoyment of the said property.

7. In the result, we are of the view that if there is any such illegal obstruction or law and order situation, police shall interfere and maintain necessary law and order in the matter.

This writ petition is therefore disposed of directing the 2nd respondent to ensure maintenance of law and order in the matter relating to petitioner's enjoyment of plaint A schedule property in O.S.No.19/2002 of the Sub Court of Attingal. If any offence is committed or there is any attempt to commit offence, it is always open for the petitioner to file necessary complaint before the police who shall look into the matter and take appropriate action, in accordance with law.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

