

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

WP(C).No. 30533 of 2006 (I)

PETITIONER :

**SANTHAKUMARI,
AGED 52 YEARS, D/O.CHANDU,
RESIDING AT TALI, CHALAPPURAM
KOZHIKODE.**

**BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH**

RESPONDENT(S) :

**1. AHAMMED MOOPPAN,
AGE AND FATHER'S NAME NOT KNOWN
RESIDING AT MANDAYAPPURATH,
KALPPAKANCHERY, MALAPPURAM.**

**2. THE TAHSILDAR,
KOZHIKODE.**

**R1 BY ADV. SRI. P.A. ABDUL JABBAR
R2 BY GOVT. PLEADER SRI. MANOJ P. KUNJACHAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 30533 of 2006 (I)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE PARTITION DEED.

EXT.P2 COPY OF THE RELEASE DEED.

EXT.P3 COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 26.6.2006.

RESPONDENT'S EXHIBITS :

EXT.R1(a) : COPY OF THE SALE DEED NO. 872/2002 OF KOZHIKODE SRO.

EXT.R1(b) COPY OF THE SALE DEED NO. 1309/2004 OF KOZHIKODE SRO.

EXT.R1(c) COPY OF THE SITE PLAN APPROVED BY THE TOWN PLANNING
OFFICER OF CORPORATION OF CALICUT.

//TRUE COPY//

P.S. TO JUDGE

Mn

K. Vinod Chandran, J.

W.P.(C).No.30533 of 2006-I

Dated this the 06th day of July, 2015

JUDGMENT

The petitioner is aggrieved with Exhibit P3, passed by the Tahsildar in an application filed by the 1st respondent. The contention is that, the Tahsildar, in Exhibit P3, has usurped the powers vested in a Civil Court and the Civil Court has also answered on the very same dispute, subsequent to Exhibit P3.

2. The facts are that the petitioner and her two sisters were parties to a partition deed, at Exhibit P1, wherein Schedule-I property was allotted to the petitioner and Schedule II and III were to the two sisters. One of the sisters sold her share to the 1st respondent. Admittedly the said sister who sold the property to the 1st respondent, had a right of way, through a pathway shown in the Schedule-I. The 1st respondent, according to the petitioner, had been using heavy vehicles through the pathway, which was objected to by the petitioner herein. The 1st respondent, hence, filed an application before the Tahsildar and in Exhibit P3 the Tahsildar found that the 1st respondent had easementary right over Tak.2 of item No.1 property. The petitioner challenges the same on the ground that the Tahsildar could not have gone into such issues, which is to be left to the Civil Courts.

3. In this context, it is to be noticed that the 1st respondent has filed a Civil Suit, which was decreed. An appeal is said to have been filed by the petitioner, in which the decree was modified, insofar as restricting the 1st respondent to take only light vehicles through the pathway. It is also submitted that a Second Appeal was filed by the 1st respondent, which was dismissed. Therefore, Exhibit P3 is of no consequence and the utilisation of the pathway would depend upon such decree passed by the Civil Court. In such circumstance, the 1st respondent could only have a right to take light motor vehicles through the properties in accordance with the decree of the Civil Court. Exhibit P3 would stand set aside.

Writ petition allowed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]