

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 25929 of 2013 (M)

PETITIONER:

SUBAIDA SUBAIR, W/O. K.K. SUBAIR,
KARUTHEDATH HOUSE,
SREEMOOLANAGARAM P.O.,
ALUVA, ERNAKULAM.

BY ADVS. SRI. T. A. UNNIKRISHNAN
SMT. AYSHA RAHMAN

RESPONDENTS:

1. THE ADDITIONAL DISTRICT MAGISTRATE,
ERNAKULAM PIN 682 020.
2. ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SECTION, CHOWARA,
ALUVA, ERNAKULAM DISTRICT PIN 683 571.
3. MOHAMMED BASHEER, PALLATH KADAVIL,
SREEMOOLANAGARAM P.O., CHOWARA,
ALUVA, ERNAKULAM DISTRICT PIN 683 571.

R3 BY ADV. SRI. NOEL JOSEPH
R3 BY ADV. SMT. MERIL MUTHU P. JOHN
R2 BY ADV. SRI. SAJEEVKUMAR K. GOPAL, SC, KSEB
R1 BY GOVERNMENT PLEADER SMT. DEEPA G. N.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF ROUGH SKETCH SHOWING THE ELECTRIC LINE
- EXHIBIT P2 TRUE COPY OF THE REQUEST DATED 8/1/2013 SUBMITTED BY THE PETITIONER TO THE DISTRICT COLLECTOR, ERNAKULAM
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 5/2/2013 IN WPC NO 3360/2013 OF THIS HON'BLE COURT
- EXHIBIT P4 TRUE COPY OF THE ORDER PASSED BY 1ST RESPONDENT DATED 26/9/2013

RESPONDENT(S)' EXHIBITS

- ANNEXURE R2(a) TRUE COPY OF THE ROUGH SKETCH SHOWING THE ROUTE.
- EXHIBIT R3(a) TRUE COPY OF THE APPLICATION DATED 20.11.2013 SUBMITTED BY THE PETITIONER.
- EXHIBIT R3(b) TRUE COPY OF THE ORDER DATED 29.01.2014 PASSED BY THE SUB DIVISIONAL MAGISTRATE, FORT KOCHI
- EXHIBIT R3(c) TRUE COPY OF THE PHOTOGRAPHS
- EXHIBIT R3(d) THE TRUE COPY OF THE ORDER DATED 23.03.2015 OF SUB DIVISIONAL MAGISTRATE, FORT KOCHI.

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

WP(C) NO. 25929 OF 2013

Dated this the 13th day of August, 2015

JUDGMENT

The property of the petitioner and the third respondent are separated by a pathway running in east west direction. The third respondent claims exclusive right over the pathway. There is no rival claim over the pathway by the petitioner. All that the petitioner wants is to shift the electricity supply line to the southern side of the pathway.

2. The property of the third respondent is on the southern side. His brother owns property on the south western corner. There is technical feasibility to shift the electricity supply line to the southern side of the pathway. This is evident by the statement filed on behalf of the second respondent.

3. The third respondent cannot insist that the line should flow along the northern side of the pathway. The third respondent has been complaining to the second respondent often against maintenance of the electricity supply line. Ext.R3(b) is an order passed by the Sub Divisional Magistrate regarding the

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cutting of branches of trees. The petitioner wants to lead a peaceful life without any complaint from the third respondent. This is precisely why the line ABCD is sought to be shifted to the southern side of the pathway.

4. A total non application of mind is well evident from Ext.P4 order of the first respondent. The petitioner has agreed to pay the labour charges for shifting the electricity supply line. The electricity supply line can be drawn along the southern side of the pathway. The property of the third respondent is on the southern side of the pathway. It is only just that the line is drawn along the southern side of the pathway in question.

5. Ext.P4 order is quashed. The second respondent is directed to act in accordance with the directions above.

The Writ Petition is allowed. No costs.

**V. CHITAMBARESH
JUDGE**

ncd