

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WP(C).No. 33374 of 2015 (V)

PETITIONER(S):

**JOSEPH, AGED 60 YEARS,
S/O.POKKAN THOMAN, KALLELI HOUSE, ALOOR VILLAGE DESOM,
MUKUNDAPURAM TALUK, PIN - 680 683.**

BY ADV. SRI.K.RAVI (PARIYARATH)

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. REVENUE DIVISIONAL OFFICER,
COLLECTORATE, AYYANTHOLE, THRISSUR-680 001.**
- 3. ALOOR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, ALOOR P.O.,
THRISSUR DISTRICT, 680 001.**
- 4. JOB,
S/O.PUTHENPARAMBIL HOUSE, ALOOR P.O.,
THRISSUR DISTRICT, 680 001.**
- 5. SOBHA JOY,W/O.JOY,
ALoor P.O., THRISSUR DISTRICT - 680 001.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.GIKKU JACOB
R3 BY ADV. SRI.T.N.MANOJ
R4 & R5 BY ADV. SRI.SUMAN CHAKRAVARTHY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: A TRUE COPY OF THE JUDGMENT IN O.S.NO.197 OF 2013
DATED 28.10.2014 ON THE FILE OF THE MUNSIF COURT, CHALAKUDY.**

**EXHIBIT-P2: A TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.1950 OF 2013
DATED 12.3.2014 OF THIS HON'BLE COURT.**

**EXHIBIT-P3: A TRUE COPY OF THE COMPLAINT BEFORE THE DISTRICT COLLECTOR,
THRISSUR DATED NIL.**

**EXHIBIT-P4: A TRUE COPY OF THE NOTICE SERVED ON THE PETITIONER
DATED 8.9.2015.**

**EXHIBIT-P5: A TRUE COPY OF THE OBJECTIONS PREPARED BY THE PETITIONER
DATED 7.10.2015.**

**EXHIBIT-P6: A TRUE COPY OF THE ORDER PASSED BY THE SECOND RESPONDENT
DATED 9.10.2015.**

RESPONDENT(S)' EXHIBITS:

EXT.R4(a): TRUE COPY OF THE DOCUMENT NUMBER 485 OF THE YEAR 1953.

EXT.R4(b): TRUE COPY OF THE SALE DTD.30.12.1989.

EXT.R4(c): TRUE COPY OF THE COLOURED SKETCH.

EXT.R4(d): TRUE COPY OF THE ORDER DTD.9.8.2000 BY THE ADM, THRISSUR.

EXT.R4(e): TRUE COPY OF THE JUDGMENT DTD.30.7.1990.

**EXT.R4(f): TRUE COPY OF THE COMPROMISE PETITION FILED BEFORE THE SUB
COURT, IRINJALAKUDA IN AS 92/1990.**

EXT.R4(g): TRUE COPY OF THE JUDGMENT DTD.8.9.2010 IN OS.1127/2000.

EXT.R4(h): TRUE COPY OF THE RESOLUTION NO.252/2015.

EXT.R4(i): TRUE COPY OF THE PLAINT IN OS.2146/1987.

**EXT.R3(a): TRUE COPY OF THE JUDGMENT IN OS.2146/1987 OF THE MUNSIF COURT
AT IRINJALAKUDA.**

**EXT.R3(b): TRUE COPY OF THE COMPROMISE RECORDED IN AS 92.1990, BEFORE
THE SUB COURT AT IRINJALAKUDA.**

Msv/

WP(C).No. 33374 of 2015 (V)

**EXT.R3(c): TRUE COPY OF THE SURRENDER KAYCHIT OF POKKAN THOMAN
JOSEPH.**

EXT.R3(d): TRUE COPY OF THE SURRENDER KAYCHIT OF SMT.SHOB.A.

EXT.R3(e): TRUE COPY OF THE SURRENDER KAYCHIT OF PULIYANI MARIKKUTTY.

EXT.R3(f): TRUE COPY OF THE SURRENDER KAYCHIT OF ARIKKAT JOSE RAJESH.

//TRUE COPY//

P.S.TO JUDGE

MsV/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.33374 of 2015

Dated this the 30th day of November, 2015

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P6 order of the Revenue Divisional Officer, Thrissur dated 9.10.2015. According to the petitioner, the pathway referred in Ext.P6 is a private pathway and the civil court has to settle the issue. Therefore, Ext.P6 order is illegal. Apart from the above contentions, the petitioner contended that he was not given sufficient opportunity in the matter.

2. It is to be noted that this order is not passed in terms of Section 133 of the Code of Criminal Procedure. Apparently, the order has been passed noting that an obstruction to the public pathway and the obstruction has to be removed. It appears that the Panchayath is also taking measures to tar the road upon the request of the residents of the locality. Learned counsel for the Panchayath also affirmed this fact.

3. It is contended by the petitioner that it is a private pathway. It is also contended by the party respondents that it is a public pathway nothing to do with the petitioner's property. If the petitioner has any title to the property or pathway is a matter to be decided by the civil court. Even if the order is passed by the Revenue Divisional Officer, it will not take away any such right available to the petitioner to establish before the civil court that the pathway in question is exclusively belongs to him. The question would arise that it is private pathway or public pathway if it belongs to the petitioner and the Revenue Divisional Officer's proceedings is in terms of Section 133 of the Code of Criminal procedure. Necessarily, the petitioner cannot find fault with such proceedings unless he is able to establish the way in question is exclusively belongs to him. In such situation, the remedy of the petitioner is to approach the civil court based on the title and seek an injunction.

Since the respondents have taken the stand that this way has nothing to do with the petitioner's land, this Court is of the view that it is open for the petitioner to establish before the civil court about his right on the pathway and to seek appropriate relief. With that liberty, this writ petition is disposed of as there is nothing to interfere with the proceedings at this stage.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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