

**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 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937**

**WP(C).No. 37812 of 2015 (B)**  
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**PETITIONER(S):**  
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**FRANCIS MATHEW, AGED 49 YEARS,  
S/O. MATHEW, PEEDIKAYIL HOUSE, THATHAMPALLY P.O.,  
ARYAD SOUTH VILLAGE, AMBALAPPUZHA TALUK, ALAPPUZHA,  
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,  
BEENA FRANCIS, W/O. FRANCIS, PEEDIKAYIL HOUSE,  
THATHAMPALLY P.O, ARYAD SOUTH VILLAGE,  
AMBALAPPUZHA TALUK, ALAPPUZHA.**

**BY ADVS.SRI.S.SANAL KUMAR,  
SRI.M.T.SURESHKUMAR,  
SMT.T.J.SEEMA,  
SMT.BHAVANA VELAYUDHAN,  
SMT.SMITHA PHILIPOSE.**

**RESPONDENT(S):**  
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- 1. K.A. ANTONY, AGED 55 YEARS, KOCHUPURAKKAL,  
THATHAMPALLY WARD, ARYAD SOUTH VILLAGE,  
AMBALAPPUZHA TALUK, ALAPPUZHA- 688 013.**
- 2. THE CIRCLE INSPECTOR OF POLICE,  
ALAPPUZHA NORTH POLICE STATION,  
ALAPPUZHA- 688 001.**
- 3. THE DISTRICT POLICE CHIEF,  
ALAPPUZHA- 688 001.**

**R2 & R3 BY SR. GOVT. PLEADER SRI.P.I. DAVIS.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**rs.**

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. COPY OF THE POWER OF ATTORNEY DATED 21.06.2010 ISSUED BY THE PETITIONER TO HIS WIFE BEENA FRANICS.
- EXHIBIT P2. COPY OF THE JUDGMENT OF THE DISTRICT COURT, ALAPPUZHA IN AS. NO.36/09 DATED 09.03.2012.
- EXHIBIT P3. COPY OF THE JUDGMENT OF THE ADDITIONAL MUNSIF COURT, ALAPPUZHA IN OS. NO. 762/2011 DATED 19.11.2013.
- EXHIBIT P4. COPY OF THE PLAINT IN OS.728/12 FILED BY THE 1ST RESPONDENT BEFORE THE MUNSIF COURT, ALAPPUZHA DATED 15.11.2012. ALONG WITH ENGLISH TRANSLATION.
- EXHIBIT P5. COPY OF THE PHOTOGRAPHS SHOWING THE LIE OF THE RESIDENTIAL HOUSE OF THE PETITIONER.
- EXHIBIT P6. COPY OF THE PHOTOGRAPHS SHOWING THE DILAPIDATED PROTRUDED PORTION OF THE ROOF OF THE PETITIONERS RESIDENTIAL HOUSE.
- EXHIBIT P7. COPY OF THE PHOTOGRAPHS SHOWING THE LIE AND LOCATION OF THE PATHWAY.
- EXHIBIT P8. COPY OF THE COMPLAINT SUBMITTED BEFORE THE 2ND RESPONDENT BY THE PETITIONER DATED 29.11.2015 ALONG WITH ITS ENGLISH TRANSLATION.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

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

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W.P(C). No. 37812 of 2015

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Dated this the 14<sup>th</sup> day of December, 2015

JUDGMENT

Shaffique, J

Petitioner claims to be in possession of five cents of land with a building therein. There was an issue with neighbouring land owner regarding the use of a pathway. The repair work is to be conducted on the roof. The petitioner filed O.S.No.762 of 2011 before the Munsiff Court, Alapuzha. Though an interim order was sought for, the same was not granted. Exhibit P3 is the order dated 19.11.2013 of learned Additional Munsiff. However, in Exhibit P3, while considering the issue no.4 the learned Additional Munsiff observed as under :

“ It is the case of the plaintiff that the defendants are causing obstruction to repair or maintenance of the protruded roof portion of the plaintiff's building into item No.2 pathway. Though CW1 has reported that the protruded portion of the roof of the plaintiff's building requires repair, there is no evidence on record to show that the defendant are causing any obstructions to repair work. In the absence of evidence as to the obstruction being caused to the repair work, the injunction sought for by the plaintiff cannot be sustained. The defendants have also admitted that they have no intention to cause obstruction to the maintenance work of roof portion of the plaintiff's building protruded into item no.2 pathway. Hence no adjudication is necessary on this issue. Issue No.4 is answered accordingly.”

2. Learned counsel for the petitioner submits that when attempts were made to carry on the repair work, the defendants in the suit namely, the respondents 1 and 2 again made obstruction despite the undertaking given by them before the Munsiff Court. Hence the petitioner seeks for police protection to carry out the repairs.

3. In so far as the issue raised by the petitioner is not with reference to an offence committed or attempt to commit offence, we do not think that this Court will be justified in directing the police to give necessary police protection. As the dispute between the parties is of civil nature and admittedly a civil suit is pending, it is appropriate for the petitioner to approach the civil Court and obtain orders.

With the above observation, the writ petition is closed.

Sd/-  
ASHOK BHUSHAN  
CHIEF JUSTICE

Sd/-  
A.M.SHAFIQUE,  
JUDGE