

IN THE COURT OF THE MUNSIFF, KOCHI

Present :- Smt. Sai Vani K.R., LL.B., Additional Munsiff

Friday, the 24th day of January, 2014/ 4th Magha, 1935**I.A.No.99/2014 in O.S. No.18/2014****Petitioner/Plaintiff:-**

Hari Prabhu, S/o. Sarvothama Prabhu, aged 44 years,
Vembrakkatt House, Palluruthy Nada, Kochi – 682 006.

By Adv. A.P. Juby Raj.

Respondents/Defendants:-

1. Corporation of Cochin, Rep. by its Secretary, Kochi.
2. Secretary, Corporation of Cochin, Kochi.
Exparte.

This petition Under Order 39 Rule (1) of the Code of Civil Procedure to grant a temporary prohibitory injunction, restraining the defendant and his men and agents from concreting the 'B' schedule pathway illegally and forcefully without the consent of the plaintiff and family.

This petition come up for hearing before me on 24.01.2014 and the court on the same day passed the following:-

ORDER

This petition is filed under Order 39 Rule 1 CPC.

2. Petitioner's case in brief is that his father was the owner, in possession and enjoyment of 34 cents of land along with residential building therein in survey No.664 of Rameswaram village, Kochi Taluk by virtue of partition deed No.285/1125 of SRO, Kochi. Later he transferred certain portion of his land to various person and thereafter he had been enjoying and possessing, the remaining 9.650 cents of land. After the death of his father, the plaintiff along with his mother and sister has been enjoying the property as the legal heirs of his deceased father. While alienating the property the petitioner's father had provided a strip of land as a common pathway towards the said properties. This strip of land is a part of the remaining property

having an area of 9.650 cents of land with a length of 182 feet and width of 6.5 feet which is shown as plaint B schedule property. Petitioner's father was paying basic tax for the entire 9.650 cents of land which includes the pathway also. Hence it is a private pathway which is being used by his family as well as other families to whom he had transferred the rest of properties. In the year 2012 petitioner got information that the Corporation of Kochi, respondents herein is planning to concrete the B schedule pathway and then he preferred a complaint before the 2nd respondent objecting the said proposal. In reply thereto the 2nd respondent assured that his complaint could be considered and necessary action taken, as and when concreting of the B schedule pathway takes place. Petitioner states that inspite of the assurance given, on 8.1.2014 the respondents came to the B schedule pathway and started preparations to concrete the pathway. The respondent apprehends that the Corporation authorities will forcefully and illegally do the concreting work even before taking a decision on the petitioner's complaint. Hence the petitioner prays for a temporary prohibitory injunction restraining the respondents, his men and agents from concreting the B schedule pathway illegally and forcefully without the consent of the petitioner and his family. Hence this petition.

3. The respondents were served but remained absent. They were called absent and set exparte. Heard the counsel for the petitioner. Exts.A1 to A6 were marked from the side of the petitioner. Commission report was marked as Ext.C1. Exts.A1 and A6 are the partition deed and the basic tax receipt which shows that the petitioner is the absolute owner and is having possession of the petition schedule property. Exts.A2 and A4 are the complaints filed by the petitioner before respondents. Ext.C1 report filed by the advocate commissioner shows that the plaint B schedule pathway is being used by the petitioner's family members as well as families of Padmnabhan Nambiyar, Ambujam and Sajeewan. This would show that the B schedule pathway is a clear private pathway. The petitioner apprehends that the

respondents will trespass into the petition B schedule pathway and will concrete the pathway illegally which will cause irreparable injury to the petitioner. Hence I find that the petitioner has made out a prima facie case and balance of convenience is also in his favour.

In the result, this petition is allowed. Respondents, their men and agents are restrained from concreting B schedule pathway illegally and forcefully without consent of the petitioner and his family until final disposal of the suit.

Dictated to the Confdl.Asst, transcribed and typed by her, corrected and pronounced by me in open court on this the 24th day of January 2014.

Sai Vani K.R.
Additional Munsiff

APPENDIX :

Petitioner's Exhibits:-

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| A1 | | Photocopy of the Partition Deed with No.285/1125 ME of Kochi SRO. |
| A2 | | Photocopy of the complaint filed by the plaintiff before the Asst. Executive Engineer Cochin, Palluruthy. |
| A3 | 22.01.2013 | Photocopy of the reply given by Asst. Executive Engineer, Corporation of Cochin. |
| A4 | 10.01.2014 | Photocopy of the Complaint filed by the plaintiff before the Asst. Executive Engineer, Corporation of Cochin, Palluruthy. |
| A5 | 10.01.2014 | Photocopy of the acknowledgment receipt issued by Corporation of Cochin, Palluruthy. |
| A6 | 17.05.2013 | Photocopy of the basic tax receipt. |

Respondent's Exhibits:- NIL.

Witness for both sides:- NIL.

Court Exhibits:-

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| C1 | 23.01.2014 | Commission report filed by Adv. Lovely K.S. |
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Additional Munsiff

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compd by: