

**IN THE COURT OF THE MUNSIFF, KOCHI**

Present :- Sri.Krishnankutty K.V., LL.B., LL.M, Additional Munsiff

Tuesday, the 5<sup>th</sup> day of April, 2016/16<sup>th</sup> Chaithra, 1938

**I.A.No.778/2016 in O.S.No.88/2016**

**Petitioner/Plaintiff:-**

Roy George, aged 60, S/o.Iype @ Joseph, residing at KP 4/203  
residing at Pazhampally House, Kumbalangi P.O.,  
Kochi – 682 007.

By Adv. M/s. Paul Parakkal, K.S.Sathis Babu &  
Nimmy Joseph.

**Respondents/Defendants:-**

1. Sree Subramanya Swamy Sree Mahabhadra Kali Shethram,  
Kumbalangi, Kochi – 682 007, represented by its  
Devaswom President K.A.Mukundan.
2. Harijanodharana Devaswom Reg No.162/1977 Kumbalangi,  
Kochi, represented by its President K.A.Mukundan.
3. Harijanodharana Co-Operative Society Reg No.147 Kumbalangi,  
Kochi – 682 007, represented by its Secretary.

D1 & D2 By Adv. O.S.Ramakrishnan.

D3 – By Adv.Sajan Antony.

This petition filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure to pass an order of interim prohibitory injunction restraining the respondents, their men and agents from obstructing the petitioners, his men and agents, the ingress and egress of the petitioner and his men and agents from pliant A schedule property through the plaint C schedule property to the pathway on the north, not to obstruct the petitioner, his men and agents from taking usufructus from the plaint A schedule property, further restraining the respondents not to

trespass/enter into the plaint A schedule property and putting up any structures in the plaint A schedule property.

This petition come up for hearing before me on 29.03.2016 and the court on 05.04.2016 passed the following:-

### **ORDER**

This is a petition for interim prohibitory injunction restraining the respondents, their men and agents from obstructing the petitioners, his men and agents, the ingress and egress of the petitioner and his men and agents from plaint A schedule property through the plaint C schedule property to the pathway on the north, not to obstruct the petitioner, men and agents from taking usufructus from the plaint A schedule property, further restraining the respondents not to trespass/enter into the plaint A schedule property and putting up any structures in the plaint A schedule property until disposal of the suit.

2. The reason stated in then affidavit is that the fact is stated in the petition that the petitioner is having easement by necessity over C schedule pathway. The respondents are trying to trespass in the petition schedule property. There was an agreement prior to 10 years for selling the plaint A schedule property but due to the laxity of the respondent it was lapsed. Now the respondents are trying to trespass in the plaint schedule property trying to make installations. Hence the petition.

3. Respondent 1 & 2 filed counter stating that there is opening in the north-east of the B schedule but it is used to lock during night times and after the working hours of the staffs of the 3<sup>rd</sup> respondent. The respondent has agreed to purchase plaint A schedule property after selling other property in their ownership

from the petitioner. The plaint A schedule is used by respondents for more than 60 years for conducting poojas. Hence to dismiss the petition.

4. Heard both sides.
5. Ext.A1 to A5 series and B1, C1 & C1(a) were marked.
6. From the above, the following points arise for consideration.
  1. Whether the petitioner is entitled to get interim prohibitory injunction as prayed for?
  2. What shall be the proper order?

7. Point No.1 & 2:- The contention of the petitioner is that the respondents are trying to trespass into plaint A schedule property and making use of it. They are also obstructing C schedule way which is necessary for the enjoyment of A schedule. The right of petitioner and his predecessor over plaint A schedule property was not disputed by the respondent. But their contention is that they acquired right over plaint A schedule using it for more than 60 years. The opening in the C schedule will be closed after working hours of the 3<sup>rd</sup> respondent and during night hours. The Advocate Commissioner filed commission report stating that the C schedule is the only way to enter into A schedule. There is a mango tree in the A schedule and a red cloth has been seen tied in the same tree. Some photos, one statue, a stone also seen beneath the same. There is a soolam tied with red ribbon fixed near to a Pala tree. The report of Advocate commissioner shows that there is no other passage than C schedule to reach A schedule. Some materials used for worship were also seen in the plaint A schedule property. It is also seen in Ext.A5 series photos. From the above, the court feels that the status quo is to be maintained by the parties till the final disposal of the

case. Hence parties directed to maintain status quo in the interest of justice.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 5<sup>th</sup> day of April, 2016.

Krishnankutty K.V.  
Additional Munsiff

APPENDIX :-

Petitioner's Exhibits:-

- A1. Photocopy of the partition deed bearing No.479/1123 ME of Kochi Sub Registry.
- A2. Photocopy of the Will No.115/1984 of Kochi SRO
- A3. Photocopy of the receipt No.5165/2000.
- A4. Rough Sketch of the property.
- A5 series Photos 4 Nos.

Respondent's Exhibits:-

- B1. 28.03.16 to 02.04.16 Festival Notice.

Witness for both sides:- Nil

Court Exhibits:-

- C1. 22.03.2016 Commission Report filed by Adv. Laxy A.A.
- C1(a) Rough Sketch.

Additional Munsiff

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compd by: