

**IN THE COURT OF THE MUNSIF, KOCHI**

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

Monday, the 23<sup>rd</sup> day of January, 2017 /3<sup>rd</sup> Magha, 1938

**I.A.No.3160/2016 in O.S.No.424/2016**

**Petitioners/Plaintiffs:-**

1. Prasoon A.S., S/o.Sudhakaran Eradi, aged 36 years, Sales Manager, HDFC, Ravipuram, residing in H.No.CC XVIII/1804, 'Ambat', Palluruthy North Muri, Rameswaram Village, Kochi Taluk, Pin – 682 006.
2. Dinatious, S/o.Mathew, aged 50 years, Carpenter, Valiyaparambil, Palluruthy, Cochin – 682 006.

By Adv. C.R.Suraj Babu.

**Respondents/Defendants:-**

1. Sujith, S/o.Dharmarajan, aged 36 years, Chakkamuri, H.No.XVIII/1942-A, Near 'Samanwaya Lane, Palluruthy, Cochin – 682 006.
2. Slimkumar, S/o.Narayanan, aged 54 years, Kalakkamcherry House, H.No.XVIII/1942-B, Near 'Samanwaya Lane, Palluruthy, Cochin – 682 006.
3. Vineetha, W/o.Salimkumar, Kalakkamcherry House, H.No.XVIII/1942-B, Near 'Samanwaya Lane, Palluruthy, Cochin – 682 006.

By Advs. Sathis Babu, Nimmy Joseph & Joby Kuriakose.

This petition filed under Order 39 rule 1 & 2 and Section 151 of the Code of Civil Procedure to pass an interim injunction restraining the respondents/defendants and their successors or men and agents from causing any obstruction or inconvenience and in peacefully enjoying and using the C schedule pathway by the petitioners/plaintiffs and their successors.

This petition come up for hearing before me on 16.01.2017 and the court on 23.01.2017 day passed the following:-

**ORDER**

This is a petition for interim injunction.

2. The case of the petitioner is that 1<sup>st</sup> petitioner is the owner and person in possession of 1.21 Ares (ie 3 cents) of land and the residential building thereon numbered as XVIII/1804 at present with all other appurtenant structures, boundary walls, water and electric connections vide document No.2827/2011 of Cochin SRO. The said properties were purchased from one Smt.Jiva James alias Cyndrella. In the said document it is clearly stated that 1<sup>st</sup> petitioner will have right of way from the said plot towards the public road that is lying on its southern side. The said property of the 1<sup>st</sup> petitioner is plaint A schedule property. The 2<sup>nd</sup> petitioner is the owner and person in possession and residing on the southern side of the plaint A schedule property. The said property comprised of 2 cents of land is purchased from the legal heirs of Smt.Bharathy who had expired on 17.2.1997 vide document No.849/2002 of Kochi SRO. In the said document also it is clearly stated that 2<sup>nd</sup> petitioner is entitled to travel through the pathway measuring 64 links length north south and 10 links width east-west on the eastern boundary of the plot. The said property of 2 cents owned by the 2<sup>nd</sup> petitioner is detailed as plaint B schedule. By the said documents petitioners are having easementary rights by grant which cannot be interfered or curtailed by anybody. Petitioners 1 and 2 were using the pathway measuring 64 links length and 10 links width as of right that lies on the eastern side of their property. The said pathway is detailed as plaint C schedule.

Respondents are residing on the eastern side of C schedule pathway. It is not known to the petitioners that whether they are residing there as owners or with any body's permission. The 1<sup>st</sup> respondent gradually encroached the pathway and put up masonry wall curtailing the width of the pathway and subsequently kept several flower pots in the said pathway. Even though petitioners questioned his acts, he used to abuse and threaten the petitioners. First petitioner had lodged a complaint to the Executive Engineer, Cochin Corporation against the 1<sup>st</sup> respondent. But so far no action is taken by the Corporation authority. Meanwhile 2<sup>nd</sup> and 3<sup>rd</sup> respondents had made massive construction and put up pillars and staircase at the mouth of the pathway without any plan or license from the authorities so as to cause hindrance to take motorcar inside the pathway. The illegal constructions made by the respondents are not having any plan or license from the Corporation authority. Both the respondents are doing all their mischievous illegal acts within the connivance, help and support of local political petty leaders. Hence the petition.

3. 2<sup>nd</sup> Respondent filed counter contending that the predecessor of the petitioners granted the pathway only through the properties in Sy.No.698/2 of the Rameswaram village and not through any other property. Even though the pathway is provided by the predecessor major portion of the said pathway is inside the compound wall of the 2<sup>nd</sup> petitioner as well as his southern property owner. The said persons constructed compound wall trespassing into portions of the pathway originally provided by the predecessor. The petitioners have to prove the existence of the pathway provided as per document No.847/2002 of Kochi SRO. As per the document No.2827/2011 of Kochi SRO in favour of the

1<sup>st</sup> petitioner, the seller has shown only a pathway having a width of 8 links. Even at that time the pathway through Sy.No.698/2 was not having a width of 8 links. The 2<sup>nd</sup> petitioner has reduced the width of the alleged plaint C schedule pathway and now only 5 links of pathway provided by the predecessor of the petitioner is available for passage. There was a puramboke thodu on the immediate east of the property owned by the predecessor of the petitioner in Sy.No.699 of the Rameswaram village, which is slowly reclaimed and portions of thodu is used as the pathway and it is the part of the present alleged plaint C schedule property. Further the southern property owner of the alleged plaint B schedule property also trespassed into portions of the original pathway provided by the predecessor of the petitioners and in those portions of the alleged plaint C schedule also the width is reduced to 5 links. The present pathway on the north, on the western side of the residence of 1<sup>st</sup> respondent has a width of 8 links and on the south is 12 links, joining the southern road lying east-west.

4. Exts.A1 to A7 marked for petitioner. Exts.B1 to B13 marked for respondents and C1 marked.

5. Heard both sides.

6. The following points arise for consideration:-

1. Whether the petitioner is entitled to get interim injunction as prayed for?
2. Reliefs and Costs?

7. Point Nos.1 & 2:- Petitioner is claiming right over 10 links width way which is C schedule on the eastern side of the 2<sup>nd</sup> petitioner's property as per Ext.A5 document. They are relying on Ext.A4 document of 1<sup>st</sup> petitioner.

Respondent contended that on verification of Exts.A4 and A5 it can be seen that there is no way of 10 links as claimed by the petitioner. The advocate commissioner reported that the owner of plaint A and B schedule properties are using the pathway measuring about 15.30 m length and 2 m width that lies on the eastern side of their properties. C schedule is the said pathway. The said pathway leads to Samanwaya Lane which is having about 3 mts width and a length of about 31 mts which reaches the public road. Viiz Rajive Gandhi road on the east, the said road lying in north-south direction. In C schedule pathway is found the wall put up by 2<sup>nd</sup> defendant which is the wall of the bathroom encroaching on the pathway with a length of about 4.5 mts in north-south direction and width of 0.30 mts, thereby obstructing the vehicular traffic to that extent. So also on the southern end of the pathway, defendant No.2 and 3 has constructed a concrete staircase which looks like a new construction, may be about less than one year old, with a width of 2.82 feet encroaching on the C schedule pathway. The southern end of the C schedule pathway where the encroachment is seen, is found to have been covered with tin sheet in 'L' shape which also obstructs the free turning of the vehicles leading to the Swayamwana Lane. The house of defendants 1 and 2 are situated on the eastern side of the C schedule pathway. On comparison of schedule to Ext.A4 & A5 it can be seen that there is no way having 10 links east as claimed by petitioner. Ext.A4 says about 8 links way and Ext.A5 did not mention the width of the way. The advocate commissioner also noted only 2 mt width of C schedule way. But noted the encroachment made by both the respondents also. Petitioner not seems to have stated actual width of the C schedule way in the petition. The

actual width of C schedule way can be ascertained only during evidence in trial. Hence petitioner is not entitled to get injunction as prayed for. But court feels that a status quo order is necessary in the interest of justice. Parties are directed to maintain status quo.

Dictated to the Confdl.Asst, transcribed and typed by her corrected and pronounced by me in open court on this the 23<sup>rd</sup> day of January 2017.

Krishnankutty K.V.  
Additional Munsiff.

APPENDIX

Petitioner's Exhibits:-

- |     |            |   |
|-----|------------|---|
| A1. | 18.10.1995 | Copy of partition deed bearing No.5451/95 of SRO Kochi.   |
| A2. | 23.03.2002 | Copy of Sale Deed No.847/2002 of SRO, Kochi.  |
| A3. | 05.08.2004 | Copy of Sale Deed No.4204/04 of SRO, Kochi.   |
| A4. | 20.07.2011 | Copy of Sale Deed No.2827/2011 of SRO, Kochi.   |
| A5. | 23.03.2002 | Copy of Sale Deed No.849/2002 of SRO, Kochi.  |
| A6. |            | Copy of the sketch issued from Rameswaram Village.  |
| A7. | 10.11.2016 | Copy of the complaint given by the 1 <sup>st</sup> plaintiff to the Assistant Executive Engineer, Cochin Corporation. |

Respondent's Exhibits:-

- |     |            |  |
|-----|------------|--|
| B1. | 01.04.2009 | Photocopy of the puramboke residence identity card of the mother of 1 <sup>st</sup> plaintiff. |
| B2. | 29.08.2013 | Photocopy of notice ascertainment of the property tax.   |
| B3. | 29.08.2013 | Photocopy of the Charge of registry 18/P7/1789 – 89-90.  |
| B4. | 15.06.2016 | Photocopy of the property tax receipt.   |
| B5. | 07.04.2015 | Photocopy of the property tax receipt.   |

- B6. 29.08.2013 Photocopy of the property tax receipt.
- B7. 03.09.2013 Photocopy of the property tax receipt.
- B8. 11.03.1992 Photocopy of the certificate.
- B9. 24.12.2008 Photocopy of the Ration Card.
- B10. 26.09.2016 Photocopy of the property tax receipt of 12/1942 – P  
CU(A) B1.
- B11. 20.12.1999 Photocopy of the possession certificate of House  
No.P88/90
- B12. 11.03.1986 Photocopy of the possession certificate 18(D) 1789-  
89/90.
- B13. 04.06.2016 Photocopy of the certificate issued by the Village officer,  
Rameswaram.

Witness for both sides:- Nil

Court Exhibits:-

- C1. 16.01.2017 Commission report filed by Adv.V.N.Kamath.

Additional Munsiff

CSS  
compd by: