

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Civil Judge (Junior Division)
Friday, the 1st day of November, 2024/ 10th Karthika 1946

IA No. 06/2021

in

OS.313/2021

Petitioners/Plaintiffs:-

1. George, S/o. Paulose & Paily, Vengassery House, Thrikkalathoor Kara, Airapuram Village.
2. Aliyamma, W/o. Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village.
3. Nitha, D/o. Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village.
4. Nisha, D/o. Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village.
5. Bijoy, S/o. Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village.
represented by his Power of Attorney
Holder Anoop, S/o. Thamby
6. Anoop Thambi, S/o. Thambi, Vengassery House, Thrikkalathoor Kara, Airapuram Village

By Adv. P T Geevarghese

Respondents/Defendants 1 and 2:-

1. Reji Thomas, S/o. Thomas, Aarthunkal House, Thrikkalathoor Karayil, Airapuram Village.
2. Blesson (Minor), S/o. Reji Thomas, Aarthunkal House, Thrikkalathoor Karayil, Airapuram Village. Represented by his father and guardian Reji Thomas

By Adv. Hazeem Khan

This petition having been finally heard before me on 17/10/2024 and the court on 01/11/2024 passed the following:-

ORDER

1. Petition averments in brief:- The suit is one filed seeking for declaration, injunction and other reliefs. 1st respondent had filed a suit bearing No. O.S 247/21 against the 3rd respondent herein. After the institution of the said suit, 1st respondent had forcefully taken pickup jeep through plaint A schedule way. The jeep drowned in the way and the vehicle was lifted using another vehicle. Now, it is very difficult to use the way. Even before the filing the suit, the defendant had obstructed the plaint A schedule way, by dumping granite stones. After filing the suit, the 1st respondent had removed the granite stones in the way. The car belonged to the 6th plaintiff also, drowned in the mud way, which also was lifted from the way. At present, it is very difficult to take vehicles through the plaint A schedule way. It is highly necessary to maintain the way. On the western end of the Panchayat road, a gate was installed, which was locked by the 1st respondent, against which complaints were preferred before the police. Also, the gate was damaged by dashing with a lorry. If the respondents takes vehicles like pick up van, mini-lorry etc, then the way will become useless. Hence, the plaint A schedule way is to be made transportable and it is also necessary to restore the gate damaged by the respondent. Hence, the petition.
2. 1st and 2nd respondents had filed counter statement by stating that, the petition is not maintainable either in law or on facts and it is only intended to harass these respondents. The intention of the petitioners are to eliminate the way, entitled to be used by the respondents also. The

respondents are also having right to use the way. The respondents are using the way, for the last so many years. Continuously, the vehicles are being taken through the way, for the last so many years. Continuous usage of way, resulted in natural wear and tear of the way. These respondents have no objection in maintaining the way. The southern side of the way belonged to the respondents and the gate also is installed in the property belonged to these respondents. If they were unilaterally permitted to make constructions, then there is every chance of complete closure of the way. These respondents have no objection in maintaining the way in the supervision of an Advocate commissioner. The petitioners had started the dispute by obstructing the way and by locking the gate. Due to the acts of the petitioners about 280 chicks died. The gate was damaged by the wife of the 5th plaintiff while learning driving. Respondents are trying to create false evidences. These respondents have no objection in maintaining the way. Hence, the petition is to be dismissed.

3. The commissioner who had inspected the property had filed commission reports and rough sketches in both the cases. On the perusal of commission reports it can be seen that, A gate is in existence at the western end, where the disputed way commence from the road. Even as per the case of the respondents in O.S 314/21, a gate was installed at the beginning of the disputed way. So, the existence of the gate is an admitted fact, which can be seen from the commission reports and rough sketches submitted. The commissioner as per the commission reports reported that the gate is seen to be damaged and even by closing the gate, it is possible to enter the property. So, when the commissioner had

reported the damage of the gate and when its existence is admitted, then it is necessary to maintain the same with necessary repairs. According to the petitioners, the respondents had locked the gate and obstructed the way. On the other hand, the respondents had contended that the petitioners had obstructed the way, by locking the gate. As the gate is seen to be damaged as reported by the commissioner, it is necessary to maintain and repair the gates or to reinstall a gate, if required. At the same time, there is an injunction order restraining the petitioners from obstructing the way, as per order in I.A 1/21, in connected suit bearing No. O.S 314/21. So, while fixing the gate or repairing the gate, it shall not be an obstruction to use the way, by the respondents also. Therefore, on maintaining the gate and if it is kept locked with lock and key, then the respondents shall be furnished with a duplicate key to have ingress and egress through the plaint A schedule way. The respondents are also admitting that, A schedule way is to be maintained and the petitioners can be permitted to do such maintenance as required. So, in the above discussed scenario, I am of view that, petitioners have to be permitted to fix gate by maintaining it or repairing it or reinstall the same, by furnishing a duplicate key of the same to the respondents also. Hence, the petition is allowed accordingly.

4. In the result, the petitioners are permitted to fix the gate by maintaining it or repairing it or reinstall the same by furnishing a duplicate key of the same to the respondents also .

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 1st day of November, 2024.

Sd/-
ALSHARI A.
Civil Judge (Junior Division)

Appendix:-Nil

Id/-
Civil Judge (Junior Division)
(By Order)

// True Copy //

Sd/-
Junior Superintendent

Typed by: jav
Compd by : Bpl

Copy of Order
in
IA.06/2021 in
O.S. 313/2021
Dated : 01/11/2024