

IN THE COURT OF THE MUNSIFF-MAGISTRATE OF PONNANI
Present:- Smt. Sowmya T.M., Munsiff- Magistrate, Ponnani.

Monday, the 25th day of March, 2024
the 5th day of Chaithra, 1946

INTERLOCUTORY APPLICATION No.3/2023 IN
ORIGINAL SUIT No.58 OF 2017

Between:-

Abdu,
S/o.Puliyamkodath Kunhikkathar,
Kalady Amsom, Keezhmuri Desom, Ponnani Taluk. : Petitioner/
1st Defendant

And:-

1. Nabeesa,
D/o.Thekkumkattil Muhammadkutty, : Respondents/
Plaintiffs
2. Moossa,
S/o.Pallimanjalil Moideen Kutty,

Respondents are residing at
Kalady Amsom, Keezhmuri Desom, Ponnani Taluk.

This petition coming on this day for final hearing before me in the presence of Sri.Jison.P.Jose, Advocate for the petitioner and of Sri.C.Anil, Advocate for the respondents and this Court passed the following:-

ORDER

The first defendant in the suit filed the above petition to remit the commission report and plan to the advocate commissioner. The plaintiffs were shown as the respondents herein.

2. **The petition averments, in brief, are as follows :-** The suit is one for mandatory injunction for directing the petitioners to reinstate the plaint B schedule way into its original stage. The advocate commissioner submitted a report and sketch before the court on 14-08-2023. The advocate commissioner has

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not reported the concrete way available to the plaintiff A schedule property despite the request of the petitioner. Likewise, the advocate commissioner has not reported the direction of the house situated in the plaintiff A schedule property. The sketch did not contain the plaintiff A schedule property. The advocate commissioner has not considered the nature of the suit and disputes therein. The report and the plan submitted by the advocate commissioner will not serve any purpose in deciding the above suit on merits. Therefore, the commission report may be set aside and another advocate commissioner may be appointed to report the aforesaid facts.

3. The respondents filed a counter and opposed the application. The respondents claimed right over the plaintiff B schedule property by way of easement by prescription. Plaintiff B schedule way is situated on the northern side of the Plaintiff A schedule property. The advocate commissioner has reported the same specifically in the commission report. The petitioners wanted to inspect and report a way on the western side of the plaintiff A schedule property. The existence of said way is not relevant in the case on hand. The intention of the petitioner is to prolong the case unnecessarily. Hence the petition may be dismissed.

4. The point that arises for determination:

1. Is it necessary to set aside the commission report and plan?

5. Heard both sides.

6. The Point: The plaintiff A schedule property belongs to the respondents as per Document No.3256/1999 of SRO Edappal. The respondents

submitted that the respondents have a right of easement by prescription over Plaintiff B schedule property. The respondents alleged that the petitioners made obstructions in the plaintiff B schedule property with an intention to prevent the respondents from using the aforesaid way. Therefore, the obstructions in the plaintiff B schedule property may be removed. The respondents submitted that the plaintiff B schedule property is situated on the eastern side of the property of the petitioners. The petitioners took a contention in the written statement that there is no such way as shown in the plaintiff B schedule.

7. The petitioner alleged that the respondents have another concrete way for ingress and egress to the plaintiff A schedule property and the advocate commissioner has not noted the same in the commissioner's report and plan. Indeed, the claim of the respondents is based on the right of easement by prescription. The petitioners have taken a contention in their written statement that there is another way for ingress and egress to the plaintiff A schedule property. However, the petitioners have not stated any other details regarding the same in the written statement. Even if it is presumed that there is another way as alleged by the petitioners, it will not affect the rights of the respondents since the same depends on the right of easement by prescription. Apart from that, it is the bounden duty of the respondents to prove the existence of the plaintiff B schedule property before the court by adducing adequate evidence. Therefore, the court is of the view that the above petition deserves to be dismissed.

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In the result,

The above petition is dismissed.

(Dictated to the Confl. Assist, transcribed by her, corrected by me and pronounced in Open Court this the 25th day of March, 2024).

Munsiff Magistrate.

Typed by: Reni.A
Compared by:
1. Ramesan.K.K.
2. Reni.A