

In the Court of the Principal Munsiff, Nedumangad

Present:- Sri.K.M. Retheesh Kumar, B.Sc., LL.B, Principal Munsiff

Saturday 28th day of February 2015/9th Phalgunam 1936

OS NO.743/2013

Plaintiff:-

Karthikeyan Nair, S/o. Sukumara Pillai,
Aged 49 years, Residing at Visakaham,
Kuttimoodu, Manickal Muri, Nellanadu Village,
Nedumangad Taluk.

(By Adv.:- Sri.Sri.C.R. Rajeev)

Defendants:-

Shihabudeen, S/o. Akliyarukunju,
aged 37 years, Residing at Shajeer Manzil,
Kunnuvila, Melekuttimoottil, Manickal Muri.
Nellanadu Village, Nedumangad Taluk.

Exparte

This suit having been heard on on 18.02.2015 and the
court on 28.02.2015 delivered the following.

JUDGMENT

Suit for injunction.

2. Plaintiff averments in brief are as follows;

Plaintiff and defendant are neighbours. Plaintiff A schedule property and building originally belonged to the father of plaintiff namely Sukumara Pillai. The father of plaintiff executed settlement deed No.1/987/2011 in favour of plaintiff. The plaintiff accepted the gift and the property remains in the exclusive possession of the plaintiff. Plaintiff A schedule property lies in the middle of the remaining properties owned by plaintiff's father. The defendant is the adjacent property owner. There is a pathway having 5 links width which leads to the property of Sukumara Pillai, then it leads to plaintiff A schedule property and building. The way is scheduled as plaintiff B schedule. Plaintiff B schedule way is aged more than 30 years. The plaintiff's predecessors have used the said pathway openly, continuously, peacefully, uninterruptedly, as of right to reach plaintiff A schedule property and building. The plaintiff is also in enjoyment of the pathway in continuation of his predecessors. Thus plaintiff has perfected right of way of easement by prescription over the B schedule pathway. The defendant does not have any manner of right over plaintiff A schedule property or to obstruct the B schedule way. The defendant has constructed a shop room on the eastern side of defendant's property without leaving open space on the southern boundary. Eventhough the plaintiff has lodged a complaint to local body, there was no

response. Therefore, the defendant is to be restrained by a decree of permanent prohibitory injunction from causing any obstruction to the ingress and egress of plaintiff's right of way over plaint B schedule way, reducing its width and from making any further construction by abutting into the plaint B schedule way. The defendant is to be further directed by a mandatory injunction to remove the illegal structures and construction made by abutting into plaint B schedule way.

3. Eventhough defendant entered appearance, he has not filed any written statement. Thus remained exparte.

4. To prove the case of the plaintiff, plaintiff has filed affidavit and has produced three documents. These documents are marked as Exts. A1 to A3. Commission report, rough sketch etc are marked as Exts. C1 and C1(a).

5. Heard the counsel for the plaintiff.

6. Ext.A1 and A2 are the certified copy of title deed in favour of plaintiff and Ext.A3 is the copy of tax receipt. The commissioner has clearly identified and shown the plaint schedule property in Exts.C1 report and C1(a) rough sketch. In the rough sketch etc.remain unchallenged.

7. Thus on evaluation of the entire documents and affidavit produced by the plaintiff, I find that plaintiff is entitled to get a decree as claimed.

In the result, the suit is decreed as follows:

- (1) The defendant is directed by a mandatory injunction to remove the structures which is constructed by abutting into the plaint B schedule way.
- (2) The defendant is further restrained by a decree of permanent prohibitory injunction from causing any obstruction to the plaintiff's peaceful enjoyment over plaint B schedule way, reducing its width and from making further construction in plaint B schedule way.
- (2) Considering the facts, there is no order as to costs.

Dictated to the C.A, transcribed by her corrected by me and pronounced in open court on 28/02/2015.

**K.M.RETHEESH KUMAR
PRINCIPAL MUNSIFF**

Appendix:-

Exhibits Marked for the Plaintiff:

A1	26.04.2011	Certified Copy of Settlement Deed No.1/987/2011 executed by Sukumara Pillai infavour of Karthikeyan Nair
A2	11.08.2008	Certified copy of Sale Deed No.2014/2008 executed by Hussain and Others in favour of Karthikeyan Nair

A3 19.09.2013 True Copy of Tax Receipt.

Exhibits Marked for the Defendants: Nil

Court Exhibits:-

C1 17.02.2014 Commission Report filed by
Adv.Smt. Thara Rani.

C1 (a) 17.02.2014 Rough Plan filed by Advocate
Smt.Thara Rani.

Witnesses for both sides:- Nil

//True Copy//

Typed By:JKA

Compared By:

PRINCIPAL MUNSIFF

Judgment is OS.No.743/2013
Dated:28/02/2015.