

IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SRI. SANTHOSH KUMAR. N, MUNSIF
THURSDAY 6th JULY, 2023 / 15th ASHADA, 1945

IA No. 01/2023 in OS No. 240/2023

Petitioners/ Plaintiffs:

1. Adv. V. Vijayadharan, aged 72 years, S/o Gangadharan, Akshaya, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.
2. Pro. Dr. K. J. Santhi, aged 60 years, D/o Janardhanan, Akshaya, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.

By Advocate: Sri. S. Venugopalan Nair

Counter Petitioners/ Defendants:

1. G. Babu, aged 68 years, Kochumadom Veedu, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.
2. T. K. Geetha, aged 58 years, Kochumadom Veedu, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.
3. K. B. Brijithlal, aged 29 years, S/o Babu, Kochumadom Veedu, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.
4. Abdul Rahman, aged 68 years, S. B. Manzil, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.
5. Sheeba Beevi. M, aged 58 years, W/o Abdul Rahman, S. B. Manzil, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.
6. Shameer. A, aged 43 years, S/o Abdul Rahman, S. B. Manzil, Metro Nagar Residence Association, (MNRA-6) AMC XIII/90, Near Valiyakunnu Jayabharath School, Avanavanchery Village, Chirayinkeezhu Taluk, Thiruvananthapuram Dist.

By Advocate: Sri. Karette. K. Mohandas

This petition having been finally heard on 06.07.2023 and the court on the same day passed the following:

ORDER

Heard both the petitioner and respondent. The petitioner has pointed out that the petition schedule property and the property of the respondent/ defendant were common tenement and pathway having six links wide was provided through the southern boundary of the entire property and therefore the petitioners also have right in the pathway. The respondent per contra contended that the petitioners have direct access to their property from the western public road and the petition schedule property is not land locked. The pathway is the private way for the enjoyment of the respondent and that the petitioner have no manner of right over the pathway. The Advocate Commissioner has noted that the entire plaint schedule property remains as a compact plot though the same is shown in two schedules and to the west of the entire property is the public road. In the circumstance, no hardship would cause to the petitioner if an order of injunction is not granted. The Advocate Commissioner has noted a house in the A2 Part, and noted an opening for a width of 1.90 M in the southern boundary wall in the plaint schedule property. The access to A2 part as shown in the sketch is enabled through the western road and not through the opening in the southern boundary wall. Ext.A8 by which defendant obtained right over the petition schedule property was obtained in 2004. From 2004 onwards they have been enjoying access from the western road and not through the pathway in the south. In the circumstance, the petitioner has not made out a prima facie case that their enjoyment of way is restrained. Considering the fact that the petition schedule property is part of a common tenement, their right over the pathway can only be assessed after the trial. Hence status quo order is passed directing both the parties to maintain the status quo until further order. Call on 05.08.2023.

Sd/-
SANTHOSH KUMAR. N
MUNSIFF

Appendix:

Nil

Id/-
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//True Copy//

Typed by: Lasitha
Compared by: Sheena.K

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