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IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
PADMANABHAPURAM.

Present: **Sri.M.DHARMAPRABU,M.A.,LL.M.,**

Principal District Munsif

Saturday, the 9th day of January, 2021

I.A. No. 4 of 2019 in O.S. No.157 of 2019

A. Selvakumar ... Petitioner/Plaintiff

Vs.

T. Jose ... Respondent/1st Defendant

This petition came for hearing in the presence of Shri.P. Vincent, Advocate for the Petitioner/Plaintiff and of Shri.N.Vijayan, Advocate for the Respondent/1st Defendant, and upon hearing the both sides and the petition having stood over for my consideration till this day, I delivered the following

ORDER

The petition is filed under Order 39 Rules 1 and 2 of the Code seeking for temporary injunction till the disposal of the suit.

2. The gist of the petition is as follows:-

The 'A' schedule property belongs to the plaintiff under the settlement deed dated 12.10.2012. The plaintiff and his predecessors have been using the 'B' schedule pathway to access the road for a long time. In the 'B' schedule

property, the plaintiff is also parking his vehicle. The 1st defendant is the adjacent the owner constructed a new house demolishing his old hut. While so, on 31.10.2019, he encroached the 'B' schedule property and obstructed the pathway and so the suit has been filed. This petition is filed for temporary injunction.

3. The crux of the counter is as follows:-

Denied the averments contained in the petition. The 'B' schedule property was not used for parking the vehicle as stated by the petitioner. In fact, there is only 3 feet width pathway which is also given to the petitioner as a permissive in nature. In the said 3 feet width, the petitioner cannot park the vehicle. The respondent has already constructed a granites compound wall leaving 3 feet width and therefore the petitioner is not entitled for any right except the 3 feet width pathway. Hence, the respondent prays for dismissal of the petition.

4. The point for consideration is as to whether the petition is entitled for temporary injunction.

5. I have heard both sides and perused the records. This is a suit filed for declaration of easement and injunctions in which this Court as framed necessary issues for trial upon consideration of the pleadings. As stated above, the petitioner claims the pathway over the 'B' schedule property but the respondent challenged the petition on the ground that the width of the pathway

is just 3 feet and, that too, was given to the petitioner as permissive possession. As such, the dispute is relating to the width of the pathway which has to be determined by the Court.

6. In this case, there are no materials to ascertain the width of the pathway at this stage. It is seen that the petitioner has filed an application seeking for appointment of commissioner which was not proceeded with and dismissed for non-prosecution. As such, this Court is of the opinion there are no *prima facie* of materials in favour of the petitioner as to the existence of the pathway and also the balance of convenience in his favour.. Therefore, in the considered of this Court, the existence of the pathway and the dispute relating to its width can be determined only in the conduct of the main suit. Hence, the point is answered in negative.

In the result, the petition is dismissed without Costs.

Dictated to the steno-typist, transcribed and typed by her, corrected by me in my Laptop and pronounced by me in the Open Court on this the 9th day of January, 2021.

Principal District Munsif,
Padmanabhapuram.