

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No. 7303/1999

K.Sophia

Appellant

VERSUS

K.Sreedharan

Respondent

(With appln(s) for permission to place addl. Documents on record and with office report)

Date: 30.3.2006 :This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE P.P.NAOLEKAR

For Appellant:

Mr. T.L. V. Iyer, Sr. Adv.

Mr.Vipin Nair, Adv.

Mr. P.B.Suresh, Adv.

Mr. V.K. Biju, Adv.

For Respondent (s)

Mr. B.V.Deepak, Adv.

Ms. Malini Poduval, Adv.

UPON being mentioned the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order. No costs.

(Pushap Lata Bhardwaj)

(Meenu Sethi)

Court Master

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7303/1999

K. Sophia ... Appellant

VERSUS

K.Sreedharan ... Respondent

O R D E R

The plaintiff is the appellant before us. She filed a suit inter alia for permanent injunction against the defendant. The basic fact of the matter is not in dispute.

There are two rows of shops situated on the Calicut-Kannur

Highway. In between the two rows of shops there is a

pathway leading to the appellant's residence purported to

have been purchased by the plaintiff as per the documents

registered as document No. 1358/1975 and document No.

1515/1978. The respondent's house is situated by the side

of the house of the appellant herein. The respondent has also a shop which is on the South of plaint B schedule pathway. The appellant had been using the pathway. The respondent herein also claim a similar right. Disturbance in her purported exclusive possession of the property was allegedly caused by the respondent leading to filing of the aforementioned suit by the appellant. In the suit, the appellant admittedly did not raise any plea as regard her right of easement far less easement of necessity.

Learned trial Court, however, opined that the plaintiff had a right of way through the plaint B Schedule property. On the basis of the said finding, the suit was decreed and respondent was restrained by a decree of injunction from

causing obstruction to the user of plaint B schedule property as a way by the appellant. The appellant is said to have erected a gate as a result whereof the respondent was

prevented from using the said path way. Aggrieved, thereby and dissatisfied with the respondent preferred an appeal in the Court of District Judge which was ultimately transferred to the Court of Subordinate Judge of Kozhikode. In his judgment and order dated 30.9.1997, the learned appellate Court observed that 'despite such decree for injunction restraining the defendant from causing obstruction to the user plaint B Schedule property, his apprehension to the effect that he would be restrained from carrying out any repair work to the building and for that purpose entering plaint B schedule property was out of place'. The said appeal was dismissed with the aforementioned observations.

Not satisfied, the respondent carried the matter to the High Court. A cross appeal was also filed by the appellant. The learned Single Judge of the High Court, although, did not frame any substantial question of law as is required under Section 100 Civil Procedure Code but

having heard in detail the parties, modified the judgment

and order passed by the Courts below and granted a decree

directing the plaintiff- appellant to remove the gate put up in

the plaint B Schedule within three months from the said

date. It was further directed " if the plaintiff fails to remove

the gate so put up in plaint B schedule, it will be open to the

defendant to get the gate removed in execution by

approaching the executing court and getting it done at the

instance of the plaintiff."

The appellant herein,thereafter, filed a

reviewapplication before the High Court which was also

dismissed. As the gate in question was not removed by the

appellant, indisputably, the said decree of the High Court

was put in execution and on or about 7.4.1999 the said gate

was removed. However, this Court by its order dated

7.5.1999 granted stay of the operation of the said judgment.

Mr. Iyer, learned senior counsel appearing for the

appellant would submit that in view of the fact that the High Court did not formulate any substantial question of law, the matter may be remitted to the High Court for consideration thereof afresh. Learned counsel, however, submitted that keeping in view the fact that the appellant was in exclusive possession of the pathway, as described in plaint B schedule, the High Court committed a manifest error in directing her to remove the gate in question. Learned counsel for the respondent, on the other hand, would support the judgment.

It is true that no substantial question of law had been framed by the High Court, but keeping in view the fact that the suit was filed in the year 1994 and having considered the subject matter of the dispute between the parties, and having heard the learned counsel we are of the opinion that this appeal should be disposed of on merit. The appellant does not and cannot claim ownership in respect of the property in question. A case for possessory title vis-a-

vis the defendant- respondent was also not made out. Both

the parties have placed before us a plan showing the area in

question; on a perusal, whereof, it appears that whereas on

both the sides there are nine shops and though

it appears that the appellant's and respondent's house can

be approached through another road but having regard to

the fact that the shop belonging to the respondent is just by

the side of the said pathway, we are of the opinion that the

appellant could not have fixed the gate blocking the road

and passage of the respondent. The judgment and order of

the High Court, in that view of the matter cannot be faulted.

We, however, at present do not intend to go into the

merit of the claim of the plaintiff inasmuch as it appears that

another suit has been filed by the respondent against the

appellant herein. In this view of the matter no case has

made out to interfere with the impugned judgment.

However, we would request the concerned Court to dispose

of the suit as expeditiously as possible preferably within a
period of three

months from the date of communication of this order

uninfluenced by any of the observations made by this Court

in these proceedings. The appeal is dismissed. No costs.

.....J.

(S.B.SINHA)

.....J.

(P.P.NAOLEKAR)

New Delhi,

March 30, 2006.