

**Venu Vs. Udayan**

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**SooperKanoon Citation :** [sooperkanoon.com/1129751](http://sooperkanoon.com/1129751)

**Court :** Kerala

**Decided On :** Feb-14-2014

**Judge :** Honourable Mr. Justice a.V.Ramakrishna Pillai

**Appellant :** Venu

**Respondent :** Udayan

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH FRIDAY, THE14H DAY OF FEBRUARY201425TH MAGHA, 1935 OP(C).No. 2959 of 2013 (O) ----- I.A. NO. 3826 OF 2013 IN O.S. NO. 865/2009 ON THE FILE OF THE1T ADDITIONAL MUNSIFF'S COURT [RENT CONTROL COURT] TRIVANDRUM ..... PETITIONER(S): ----- VENU, AGED47YEARS S/O. PONNAN, RESIDING AT HASTHINAPURI SAROVODAYAM ROAD, SANTHIVILA, NEMOM.P.O. THIRUVANANTHAPURAM. BY ADVS.SRI.R.S.KALKURA SRI.M.S.KALESH SMT.A.V.PRIYA SRI.HARISH GOPINATH RESPONDENT(S): ----- 1. UDAYAN, AGED45YEARS S/O. VASU, RESIDING AT KURUMIYIL VEEDU, KURUMI SANTHIVILA, NEMOM.P.O.,THIRUVANANTHAPURAM-695020.

2. LEKHA, AGED35YEARS W/O. UDAYAN, RESIDING AT KURUMIYIL VEEDU, KURUMI SANTHIVILA, NEMOM.P.O.,THIRUVANANTHAPURAM-695020. BY

ADV. SRI.SERGI JOSEPH THOMAS THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON1402-2014, THE COURT ON THE SAME DAYDELIVERED THE FOLLOWING: DCS OP(C).No. 2959 of 2013 (O) -----  
APPENDIX PETITIONER(S)' EXHIBITS ----- P1. TRUE COPY OF THE PLAINT IN O.S. 865 OF 2009 ON THE FILE OF THE1T ADDITIONAL MUNSIFF'S COURT(RENT CONTROL COURT), TRIVANDRUM. P2. TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS1AND2IN O.S. 865 OF2009 P3. TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT DATED257- 2011 FILED BY DEFENDANTS1AND2IN O.S. 865 OF2009 P4. TRUE COPY OF THE COPY OF THE APPLICATION FOR AMENDMENT, I.A. 3826 OF 2013 IN O.S. 865 OF 2009 FILED BY THE PETITIONER/ PLAINTIFF. P5. TRUE COPY OF THE OBJECTION TO EXT. P4 APPLICATION, FILED BY THE RESPONDENTS/DEFENDANTS. P6. THE TRUE COPY OF THE

ORDER

IN I.A. 3826 OF 2013 IN O.S. 865 OF 2009 DATED297-2013 ON THE FILE OF THE ADDITIONAL MUNISIFFS COURT (RCC), TRIVANDRUM. RESPONDENT'S EXHIBITS:- NIL /TRUE COPY/ P.A. TO JUDGE DCS V.CHITAMBARESH,J.

----- O.P.(C) No. 2959 of 2013 -----  
Dated this the 14th day of February, 2014

## **JUDGMENT**

The Court below has thought it fit to allow the amendment of the plaint in so far as the declaration to the effect that the plaint D schedule property is part of the plaint A schedule property is concerned. But the request of the plaintiff to incorporate the plea of easement by prescription in lieu of easement of necessity by amendment of the plaint has been turned down. The main reason stated by the Court below is that no such easement could be claimed over a public road even though the plaintiff contends that public in addition to him are using the road.

2. The Court below after having allowed the amendment in part was not justified in disallowing the amendment in regard to the rest on the basis of the proviso to

Order VI Rule 17 of the Code of Civil Procedure. Moreover the question whether the disputed property is a public road or a private road arises for consideration only in the suit and the grant of amended relief is O.P.(C) No. 2959 of 2013 2 not to be taken into consideration at the time of amendment. No prejudice would be caused to the defendants in allowing the amendment in entirety as sought since they would be entitled as of right to file an additional written statement.

3. Ext. P6 order is set aside and I.A. No. 3826/2013 in O.S. No. 865/2009 on the file of the Court of the Additional Munsiff (RCC), Trivandrum is allowed. The defendants are permitted to file an additional written statement disputing the entitlement of the amended relief and the Court below is directed to take the proceedings to a logical end. The Original Petition is disposed of.  
V.CHITAMBARESH JUDGE DCS

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