

Philomina Vs. Jose

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SooperKanoon Citation : sooperkanoon.com/1143577

Court : Kerala

Decided On : Jun-05-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Philomina

Respondent : Jose

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH THURSDAY,THE5H DAY OF JUNE201415TH JYASHTA, 1936 OP(C).No. 3160 of 2013 (O) ----- CMA282012 of ADDL.SUB COURT, IRINJALAKUDA OS3502011 of MUNSIFF COURT, CHALAKUDY PETITIONER(S): ----- PHILOMINA, AGED55YEARS W/O.THULUVATH VARGHESE, CHALAKUDY DESOM KIZHAKKE CHALAKUDY VILLAGE MUKUNDAPURAM TALUK. 680 307 BY ADVS.SRI.DINESH R.SHENOY SRI.G.HARIKRISHNAN (TRIPUNITHURA) RESPONDENT(S): ----- JOSE, S/O.CHIRAMEL MULANGADAN KOCHAPPAN, CHALAKUDY DESOM KIZHAKKE CHALAKUDY VILLAGE, MUKUNDAPURAM TALUK PIN680307 BY ADV. DR.PAULY MATHEW MURICKEN THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON0506-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 3160 of 2013 (O) APPENDIX PETITIONER(S)' EXHIBITS EXHIBIT P1 COPY OF THE PLAINT IN OS NO.350/2011,MUNSIFF'S COURT, CHALAKUDY EXHIBIT P2 COPY IOF THGE

REPORT AND ROUGH PLAN SUBMITTED BY THE ADVOCATE COMMISSIONER, K.S.ROSH IN IA NO. 15732/2011 IN OS NO. 350/2011 , MUNSIFF'S COURT, CHALAKUDY EXHIBIT P3 PHOTOGRAPH PRODUCED BY THE PETITIONER EXHIBIT P3(a) PHOTOGRAPH PRODUCED BY THE PETITIONER EXHIBIT P3(B) PHOTOGRAPH PRODUCED BY THE PETITIONER EXHIBIT P4 PHOTOCOPY OF THE

ORDER

DATED1310/2010 IN IA NO.1572 AND IN IA NO.1651/2011 IN OS NO.350/2011 , MUNSIFF'S COURT EXHIBIT P5 COPY OF THE

ORDER

DATED44/2012 IN IA NO.2045 ANDE21002011 IN OS NO.350/2011, MUNSIFF'S COURT, CHALAKUDY EXHIBIT P6 COPY OF THE REPORT OF THE DEPOUTY SUPERINTENDENT OF POLICE,CHALAKUDY DATED143/2013 FILED BEFORE THE DISTRICT POLICE CHIEF EXHIBIT P7 COPY OF THE

JUDGMENT

DATED146/2013 IN CMA NO.28/2012 ADDITIONAL SUB JUDGE, IRINJALAKUDA RESPONDENT(S)' EXHIBITS : EXHIBIT R1(a) SERIES A TRUE PHOTOCOPY OF THE APPLICATIONS FILED BY THE RESPONDENT AS IA NOS. 162/2013, 362/2013 AND185913 BEFORE THE HONOURABLE MUNSIFF COURT, CHALAKKUDY. EXHIBIT R1(b) SERIES A TRUE PHOTOCOPY OF THE COMPLAINTS PREFERRED BY THE RESPONDENT TO THE SUB INSPECTOR OF POLICE CHALAKKUDY. EXHIBIT R1(c) : TRUE COPY OF THE PHOTOGRAPHS SHOWING THE PATHWAY PASSING IN BETWEEN THE PROPERTY OF THE PETITIONER AND THE RESPONDENT EXHIBIT R1(d) : A TRUE COPY OF THE PHOTOGRAPH SHOWING THE RESIDENTIAL COMPOUND OF THE PETITIONER /TRUE COPY/ P.A. TO JUDGE. V. CHITAMBARESH, J ----- OP(C) NO. 3160 OF2013----- Dated this the 5th day of June, 2014

JUDGMENT

The suit is decreed in part against which an appeal suit is pending. The counter claim was decreed ex-parte which is sought to be set aside. The courts below

have concurrently allowed the application for violation of injunction. The injunction relates to the parking of vehicles on the disputed pathway.

2. The petitioner undertakes that he will not park the vehicle anywhere along the disputed pathway. This undertaking will ofcourse enure till the appeal suit is disposed of. The respondent under such circumstances does not pursue the application under Order XXXIX Rule 2A of the Code of Civil Procedure. The order of attachment passed by the court below in that proceedings is therefore set aside.

3. The respondent is at liberty to initiate steps afresh if the undertaking is violated by the petitioner. Contempt of court as well as proceedings under Order XXI Rule 32 of the Code of Civil Procedure can very well be invoked. I appreciate the 2 OP(C) No. 3160/2013 gesture of the respondent who was present in this court. The order lifting the attachment shall be duly communicated to the concerned Sub Registrar. The Original Petition is disposed of. V. CHITAMBARESH JUDGE ncd

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