

Viswanathan vs Mary

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SooperKanoon Citation : sooperkanoon.com/1334981

Court : Kerala

Decided On : Jul-11-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : OP(C)/225/2023

Appellant : Viswanathan

Respondent : MARY

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
TUESDAY, THE 11TH DAY OF JULY 2023 / 20TH ASHADHA, 1945
AGAINST THE ORDER DATED 23.11.2022 IN I.A.NO.4/2021 IN OS
344/2020 OF ADDITIONAL MUNSIF COURT, ALAPPUZHA
PETITIONER/PETITIONER/PLAINTIFF: VISWANATHAN, AGED 69
YEARS, S/O. UNNI, THACHARANIKARTHIL, CHARAMANGALAM
MURI, MAYITHARA MARKET P.O., BY ADVS. J.OM PRAKASH
T.G.SUNIL (PRANAVAM) C.X.ANTONY BENEDICT T.G.MANOJ
T.G.SANTHOSH T.G.MAHESH EMMANUAL SANJU RATNANGA PANI
RESPONDENTS/CR.PETITIONERS/DEFENDANTS:

1 MARY, AGED 62 YEARS, W/O. BABY, THACHARAVELIYIL, CHARAMANGALAM MURI, MAYITHARA MARKET P.O., 2 BINO, AGED 35 YEARS, D/O. MARY, THACHARAVELIYIL, CHARAMANGALAM MURI, MAYITHARA MARKET P.O., 3 PRASAD, AGED 64 YEARS, S/O. RAGHAVAN, KANDATHIPARAMBIL, CHERTHALA KIZHAKKUM MURI, MUTTATHIPARAMB P.O., CHERTHALA - 688527 4 BABY GIRIJA, AGED 60 YEARS, D/O. RAGHAVAN, KANDATHIPARAMBIL, CHERTHALA KIZHAKKUM MURI, MUTTATHIPARAMB P.O., CHERTHALA - 688527

5 BABY GEETHA, AGED 60 YEARS, D/O. RAGHAVAN, KANDATHIPARAMBIL, CHERTHALA KIZHAKKUM MURI, MUTTATHIPARAMB P.O., CHERTHALA - 688527 6 JAYALAL, AGED 62 YEARS, AGED 62 YEARS, S/O. RAGHAVAN, KANDATHIPARAMBIL, CHERTHALA KIZHAKKUM MURI, KOKKOTHAMANGALAM VILLAGE, MUTTATHIPARAMB P.O., CHERTHALA - 688527 BY ADVS. SANAL KUMAR S BHAVANA VELAYUDHAN(K/290/2003) T.J.SEEMA(K/391/2002) THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 11.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Ext.P10 is under challenge. It is an application submitted by the plaintiff for restoring the B schedule pathway and to remove the obstruction created across the pathway by fencing. A commissioner was appointed for conducting local inspection of the plaint schedule property, who in turn visited the property on the next day of institution of the suit. According to the plaintiff, by that time, an obstructing fence was constructed across the B schedule way. There is no specific contention regarding any other way available to the plaintiff as means of access in the objection submitted to the Commissioners report and even no such case was advanced at the time of written statement. The Commissioner could not find any alternative way as means of access to the property of plaintiff. So as to safeguard the interest of the plaintiff by way of an interim measure without assigning a right,

title or interest whatever may be, permission is hereby granted to use 3 feet width land through the southern side of the defendants property as means of access to the plaintiff by directing the defendants to cut off and remove the obstructing fencing constructed across the said way for the abovesaid minimum purpose within 15 days, failing which, it shall be removed through court. Ext.P10 order hence will stand set aside. There will be a further direction to the trial court to expedite the disposal of the suit untrammelled by any of the observation made above within a time schedule of six months from the next posting date. The original petition will stand allowed accordingly. Sd/- P.SOMARAJAN JUDGE msp
APPENDIX OF OP(C) 225/2023 PETITIONER EXHIBITS Exhibit-P1 TRUE COPY OF THE PLAINT DATED 08.06.2020 FILED BEFORE THE ADDL. MUNSIFF COURT, ALAPPUZHA Exhibit-P2 TRUE COPY OF WRITTEN STATEMENT DATED NIL FILED BY DEFENDANTS 1 & 2. Exhibit-P3 TRUE COPY OF I.A.NO. 1/2020 IN OS NO. Exhibit-P4 TRUE COPY OF OBJECTION DATED 12.10.2021 FILED BY DEFENDANTS 1 & 2 IN I.A. NO.1/2020 Exhibit-P5 TRUE COPY OF ORDER DATED 08.06.2020 OF THE LEARNED MUNSIFF COURT, ALAPPUZHA IN I.A. Exhibit-P6 TRUE COPY OF THE COMMISSION REPORT DATED 09.06.2020 FILED BY ADV.ANTONY JOSEPH IN O.S. NO. 344/2020 Exhibit-P7 TRUE COPY OF I.A.NO. 4/2021 IN O.S.NO. PLAINTIFF Exhibit-P8 TRUE COPY OF THE OBJECTION DATED 12.10.2021 FILED BY DEFENDANTS 1& 2 IN I.A. NO. 4/2021 IN O.S. NO. 344/2020. Exhibit-P9 TRUE COPY OF OBJECTION DATED 12.10.2021 FILED BY DEFENDANTS TO THE COMMISSION REPORT Exhibit-P10 TRUE COPY OF THE ORDER DATED 23.11.2022 OF THE ADDL.MUNSIFF, ALAPPUZHA IN I.A.NO.4/2021 IN O.S.NO.344/2020 Exhibit-P11 TRUE COPY OF THE PASS BOOK ISSUED TO THE PLAINTIFF FROM THE KERALA COIR THOZHILALI KSHEMANIDHI BOARD, ALAPPUZHA. Exhibit-P12 TRUE COPY OF THE 'GEHAN' DATED 13.04.2007

EXECUTED BY THE PLAINTIFF FOR THE LOAN OBTAINED FROM THE COOPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. 327.