

Alexander vs Charly

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SooperKanoon Citation : sooperkanoon.com/1366830

Court : Kerala

Decided On : Dec-07-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : RSA/1022/2015

Appellant : Alexander

Respondent : Charly

Judgement :

IN THE HIGH COURT OF KERALA AT KANNUR PRESENTED FOR THE RECORD BY THE PETITIONER IN THE PETITION FOR WRIT OF HABEAS CORPUS (CIVIL) NO. 1022 OF 2015 AGAINST THE ORDER AND DECREE DATED 29.5.2013 IN J.S.No.37/2012 OF SUB CX-1, FK-1 AND ORDER AND DECREE DATED 31.3.2012 IN O.S.No.184/2008 OF PRINCIPAL MUNSIF COURT, ROC HI AE}p ELILH NT/Appellant/RESPONDENT: ALEXANDER, AGED 72 YEARS S/O.RATE MANUEL, PANACHIKKAL HOUSE, CC NO.21/627, PARK ROAD, PERUMBADAPPU, PALLURUTHY BY ADV SRI.M.S.UNNIKRISHNAN RESPONDENT/RESPONDENT/PLAINTIFF: C-Y, AGED 59 YEARS S/O.RATE MANUEL, PANACHIKKAL HOUSE, 21/1113, PARK ROAD, PERUMBADAPPU, PALLURUTHY 682006

BY ADVS. SRI.DINESH R.SHENOY SRI . EBIN MATHEW SMT . K . K . Tyor H I
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UP FOR ADMISSION ALONG WITH RSA NO.1023 OF 2015 ON 07.12.2023, THE
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PERUMBADAPPU, PALLURUTHY. BY ADV SRI.M.S.UNNIKRISHNAN RE SEun
ENT/App ELLZNI/DEFENDANT : CHrmY AGED 59 YEus S/O.I-ATE MANUEL,
PANACHIKKAL HOUSE, 21/1113, PARK ROAD, PERUMBADAPPU,
PALLURUTHY - 682 006

BY ADVS. SRI.DINESH R.SHENOY SRI . EBIN MATHEW SMT . K . K . -yorH I
LAKs HMy SRI.SANIL JOSE THIS REGULAR SECOND APPEAL HAVING COME
UP FOR ADMISSION ALONG WITH RSA NO.1022 OF 2015, ON 07.12.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RSZI
NOS.1022 a 1023 OF 2015 COMMONTUDGMEI`NTIT Dated this the 7th day of
December, 2023 These Regular Second Appeals have been filed under Section
100 of the Code of Civil Procedure (for short, 'the C.P.C.' hereinafter), against the
common judgment and decree in A.S.Nos.22/2012, 28/2012, 37/2012 and Cross
Objection in A.S.No.22/2012, dated 29.5.2013, on the files of the Sub Court,
Kochi, arose out of the common

judgment and decree in O.S.Nos.180/2009 and 184/2009,

dated 31.3.2012, on the files of the Munsiff Court, Kochi.

2. The parties in these appeals were referred to

mediation. When these matters came up before this Court on 1.12.2023, the
learned counsel for the respondent in both these appeals submitted that, though

the matter has been settled as per the terms of the agreement entered into between the parties, dated 25.8.2023, there occurred an error in clause No.7 of the mediation agreement. Hence, the learned counsel sought time to make RSA NOS.1022 & 1023 OF 2015 correction in the mediation agreement. Accordingly, this Court referred back the mediation agreement to the same mediator, to incorporate the correction, in accordance with law.

3. Heard both sides and perused the terms of the modified mediation agreement. The same found to be acceptable. Accordingly, the modified mediation agreement, dated 25.8.2023, is accepted.

4. In consequence thereof, the judgment and

decree of the trial court as well as the appellate court impugned herein, stand set aside and these regular second appeals stand disposed of, in terms of the modified mediation agreement, dated 25.8.2023. The modified mediation agreement shall form part of the second appellate decree. Sd/- A. BADIARUDEEN JUDGE BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM R.S.A. Nos.1022 of 2015 & 1023 of 2015 Alexander : Appellant Vs. Charly : Respondent

MEMORANDUM OF AGREEMENT UNDER SECTION 89 OF THE CODE OF CIVIL PROCEDURE READ WITH RULES 24 & 25 OF THE KERALA CIVIL PROCEDURE (MEDIATION), RULES, 2008= The dispute in the above Appeals arise from the Decree and

Judgment in Original Suit Nos,180/2009 and 184/2009 of

Munsiff's Court, Kochi against which the Appeal Nos. 22/2012 and 37/2012 were filed in Sub Court, Kochi which were dismissed. The said Second Appeals filed against the

Judgment and Decree relate to the fixation of boundary

between the Appellant and the Respondent as well as the extent of the pathway provided for ingress and egress to the property of the 3 cents in extend in

Sy.No.928/1 in Perumpadappu, owned by the Appellant. The parties have now agreed to resolve the disputes on the following terms and conditions:- -a.....----. AL_E.y`Arl r)Er2. _ A?PE.c.cfb^r:i alc#p^on^ -2-

1. The Appellant agrees that the pathway as fixed by the lower

appellate court having the width of 1.10 mts from the step of the Appellant's house up to Park Road through the property of the Respondents herein can be shifted to eastern extremity of the property as per the following width (Area shown as 'A' in the sketch attached herewith with a width of 1.25 mts including the eastern wall).

The Respondent agrees to provide the pathway shown as 'A' in the sketch appended herewith the lieu of the pathway with regard to which the right of easement is declared by the lower appellate court.

The Appellant agrees to provide the area shown as .C. in the sketch attached herewith, in exchange for the plot shown as '8. in the sketch having an extent of 8.5 sq mts with width of 0.85 mts through out. Plot 'C. is having a width of 1.25 mts on the northern side and 1.20 mts on the southern side, having an area of 8,5 sq mts.

4. The Appellant agree that the pathway 'A. and .8' in the

sketch having a total width of 2.10 mts is in lieu of all his claims with regard to easement right through the property of the respondent and that he will not make any further claim with regard to any easement right through the property of respondent hereafter. ty!.`t.-.-:---`.'A 1``1``\``- .,- Allw^alr>Eft -APPcoritl -3- The Appellant agrees that Exchange Deed will be executed between the Appellant and Respondents with regard to .a. and 'C' schedule properties assigned by them and that both parties agree that there will not be any further claim against each other with regard to the properties in Sy.No.928/1. The Appellant agrees to bear the entire expense incurred (documentation charges is inclusive of stamp duty, registration charges and other expenses) for the execution and registration of the

Exchange Deed.

7. The Appellant shall permit the Respondent to take all

necessary steps for initiating the construction of the entire compound wall forthwith on the three sides of the property of the Appellant i.e., on the western side of the pathway (area shown as 11* .8.) to be Set apart as Patehcysatytjor the Appellant, outside the pathway and on the side of plot included in the said plot as well as on the top of the existing 1/2 half wall on the southern and south western side of the plot owned by the Appellant.

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8. In the light of the compromise effected between the parties

herein and after the compliance of the terms as stipulated in clause 6 and 7 the Appeals may be disposed of by this Hon'ble Court. Dated the 25th day of August, 2023 Alexander CEan char, v4try. ^ppellant _ Respondent counpe I for the Appellant I ` a r JH i ha i HLr JGJ rbl ~esH` rLji~Ov le . 82 2-18q ` k-,@fle'c, VER.FICATION

We, the parties above named, do hereby solemnly state and declare that what is contained in paragraphs 1 to 8 are true to the best of our knowledge, information and belief. Dated the 25th day of August, 2023. Appellant Respondent Alexander ap arfuryfl^#

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