

Sreedharan Vs. Madanan

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Court : Kerala

Decided On : Dec-03-2002

Reported in : 2003(1)KLT320

Judge : R. Bhaskaran, J.

Acts : Easement Act, 1882 - Sections 17

Appeal No. : S.A. No. 964 of 1991

Appellant : Sreedharan

Respondent : Madanan

Advocate for Def. : P. Vijaya Bhanu, Adv.

Advocate for Pet/Ap. : N. Subramaniam,; M.S. Narayanan and; Ansamma Mathew,

Disposition : Appeal dismissed

Judgement :

R. Bhaskaran, J.

1. The legal representatives of the plaintiff are the appellants in the second appeal. The suit was filed for injunction restraining the respondents 1 and 2 from obstructing the plaintiff in using the plaint schedule property for drying of fishing

nets and for the purpose of keeping and repairing of fishing nets. The case of the plaintiff is that the marginal property is owned by the plaintiff and the plaint schedule property belonging to defendants 1 and 2 was intended to be purchased by the third defendant. The plaint schedule property is back-water shore and it lies immediately north of the marginal property.

2. According to the plaintiff, he has acquired easement right by way of prescription for drying fishing nets and keeping the fishing boats and repairing them and the defendants have no manner of right or to obstruct him.

3. The trial court as well as the lower appellate court have found that the plaintiffs claim cannot be allowed in view of Section 17(a) of the Indian Easements Act. Section 17(a) reads as follows:

'17. Rights which cannot be acquired by prescription.- Easements acquired under Section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired:

(a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;'

In B.B. Katiyar's Law of Easements and Licences (12th Edn.) at page 398 it is stated as follows:

'As has been already noticed under Section 4 ante, an easement is only a privilege and not an interest in the land on which it is exercised and so a right which involves the total exclusion of the owner of the soil from its enjoyment cannot be claimed as an easement. So there can be no prescriptive right of the nature of a servitude or easement so large as to preclude ordinary use of property by the owner of the lands affected.'

It is found that if the claim of the plaintiff is allowed the entire plaint schedule property consisting of 31 cents will become useless so far as the defendants are concerned. Since this is a finding of fact and that the courts below have applied the

law correctly,there is no substantial questions of law involved in the second appeal and the same is dismissed.

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