

(1991) 04 KAR CK 0040

In the Karnataka High Court

Case No : Regular Second Appeal No. 680 of 1983

Baburao Yashvantrao Jadhav

APPELLANT

Vs

Shamrao Khandi Jadhav

RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Easements Act, 1882 — Section 13, 15, 41

Citation : AIR 1992 Kar 181 : (1992) 1 KarLJ 164

Hon'ble Judges : K. Ramachandriah, J

Bench : Single Bench

Advocate : R.U. Goulay, U.L. Narayana Rao and C.H. Jadhav, for the Appellant; A.B. Patil and K.S. Savanur, for the Respondent

Judgement

1. This second appeal between two cousins residing in a remote village called Deginal in Indi taluk, Bijapur District and owning adjacent agricultural lands hearing Block Nos. 64/1 and 69/1 of the same village inherited by them from their grant father Rama Rao by way of partition more than 50 to 60 years ago amply demonstrates how difficult it is to translate into reality the dream of the Father of the Nation the concept of "Rama Rajya" in India, i.e., Bharat, even 43 years after he attained martyrdom inasmuch as these two cousins already in their sixties have not been able to arrive at an amicable settlement to find a way out to reach the adjacent land of one of them through a small pathway running at the northern end of the other's land in spite of protracted litigation and well intentioned intervention of their learned counsel at the instance of this Court on more than one occasion. Indeed, one of the parties to this appeal had even filed a petition for Special Leave to Appeal No. 2063/85 before the Supreme Court against an order of this Court dated 9-11-84 on an interlocutory application and the Supreme Court dismissed the said petition on 22-2-85 with an observation that this Court shall dispose of this second appeal at an early date.

2. This is a plaintiff's Second Appeal arising of O.S. 155/78 filed by him in the Court of the Munsiff, Indi against the respondent-defendant, who is none other

than his own cousin, for a declaration that he has a right of way through the northern end of the land of the defendant bearing Block No. 64/1 of Deginal village in order to reach his land bearing Block No. 69/1 of the same village and situate immediately to the east of Block No. 64/1 along with cart, bullock etc., along the path indicated by letters ABC and thereafter along the footpath over the bund indicated by letters DEFG in the suit sketch and for a perpetual injunction restraining the defendant from obstructing him from making use of the said cart track and the footpath and also for a mandatory injunction directing him to restore the portion denoted by letters DE on the bund to its original condition. Within about a month after the said suit was filed, defendant's brother Rajaba Khando Jadhav (for short "Rajaba") filed a suit against the plaintiff, plaintiff's brother Waman Rao and his own brother Shama Rao in O.S. 163/ 78 in the same Court for a decree of perpetual injunction against the plaintiff. Both the suits were consolidated together and disposed of by a common judgment dated 28-8-82 by which the trial Court dismissed O.S. No, 163/ 78 and decreed the plaintiff's suit O.S. 155/78 as prayed for. But, defendant promptly filed R.A. 71/82 in the Court of the Civil Judge, Bijapur who allowed that appeal by judgment dated 28-9-83, reversed the judgment and decree of the trial Court and dismissed the suit. Hence, plaintiff has filed this second appeal which is admitted on 23-11-83 for consideration of the following substantial question of law:

"Whether the first appellate Court has correctly interpreted and applied Ss. 13 and 15 of the Easements Act to the facts of the case?"

3. Appellant-plaintiff had the benefit of ad-interim order of injunction against the respondent in the trial Court during the pendency of the suit and that order enured to his benefit during the pendency of defendant's appeal in the lower Appellate Court also throughout the pendency of that appeal. After admitting this appeal, this Court ordered maintenance of status quo by both parties. Respondent defendant filed I.A. II to vacate the status quo order. By order dated 9-11-84, I.A. II was allowed and the ad interim status quo order of injunction granted earlier was vacated. It is that order that was challenged by the appellant-plaintiff by filing the above referred SLP in the Supreme Court which was dismissed with a direction to this Court to dispose of this appeal as early as possible.

4. Facts relevant to be stated for a proper consideration of the above formulated question of law are these :

(a) The relationship between the plaintiff and the defendant can be gathered from the following pedigree :

RAMA		RAO		
Yeshwant Khandu (Block No. 69) (Block No. 64)				
Baburao Woman Rao Rajaba Shama Rao				

69/1 69/1 64/2 64/1 (Plaintiff) (Defendant)

It is seen from the above pedigree table that two items of lands bearing Block Nos. 64 and 69 originally belonged to one Rama Rao mentioned in the above table. He had two sons by name Yeshwant and Khandu. At a partition between Yeshwant and Khandu, about 50 to 60 years prior to the institution of the suit in 1978, Block No. 69 fell to the share of elder brother Yeshwant and Block No. 64 situate immediately to the west of Block No. 69 fell to the share of younger brother Khandu. Yeshwant had two sons by name Babu Rao (plaintiff) and Waman Rao while Khandu had also two sons by name Rajaba (plaintiff in O.S. 163/78) and Shama Rao (defendant). At a subsequent partition inter se between Babu Rao and Waman Rao Block No. 69 was partitioned by them and the northern portion numbered as Block No. 69/1 fell to the share of the plaintiff while the southern portion numbered as Block No. 69/2 fell to the share of his younger brother Waman Rao. Similarly, at a partition between Khandu's two sons Rajaba and Shama Rao, Block No. 64 was divided into two portions and northern portion renumbered as Block No. 64/1 fell to the share of Shama Rao (defendant) and the southern portion of Block No. 64 renumbered as Block No. 64/2 fell to the share of his elder brother Rajaba. Extent of Block No. 69/1 of the plaintiff is stated to be about 8 acres 13 guntas while the extent of Block No. 64/1 of the defendant situate immediately to the west of Block No. 69/1 measures about 6 acres 20 guntas. A public road denoted by XY leading from Deginal to Kyathanakeri (for short "DK") runs from north to south on the eastern side and abutting Block No. 64/1 of the defendant and Block No. 64/2 of his brother Rajaba. Prior to the original partition, the two brothers Yeshwant and Khandu were entering Block No. 69 and 64 through that road and as such no difficulty was felt at that time to have access to the two lands. D.W. 2 Somanna Nilange is the owner of land bearing Block No. 74 situate on the southern side of the cart-track running on the southern side of Rajaba's lands bearing Block No. 64/2 and leading to Mahalingaraya hillock. There appears to be the land of one Gyanoba towards the east of the land of one Nilange. Block No. 69/2 belonging to Waman Rao (younger brother of the plaintiff) abuts the land bearing Block No. 64/2 of defendant's elder brother Rajaba.

(b) Plaintiff filed the suit out of which this appeal has arisen for the above mentioned reliefs alleging that he and his predecessor-in-title were right from the time of partition of the two Blocks about 50 to 60 years back proceeding along the XY road up to the point "A" shown in the plaint hand-sketch and then they used to turn to the east and proceed along the ABC road of which the AB portion was in the land bearing Block No. 64/1 of the defendant in order to go to his land bearing Block No. 69/1 and thereby it had become a well-trodden path with old and beaten cartwheel marks. Consequent upon that partition, plaintiff had a right to make use that path way ABC in order to reach his land

bearing Block No. 69/1 by way of easement of necessity as there was no other way to reach his land. He also alternatively contended that even otherwise, he

had acquired easementary right of way over that ABC pathway by prescription over that ABC road as he and his predecessor were making use of the same from the time of partition more than 50 to 60 years as of right, openly and without any sort of obstruction from anybody. Nevertheless, defendant had begun obstructing him from making use of that pathway since some lime past and he has not heeded to the advice of elders not to do so and, therefore, he had to file the suit.

5. Defendant resisted the suit by denying in his brief written statement the said claim of the plaintiff. He further pleaded that there is a beaten cart road towards the southern side of Block No.s. 64 and 69 and plaintiff and his brother were making use of the same till they partitioned their portion of the land bearing Block No. 69 and it is subsequent to that partition that the plaintiff was claiming to make use of the suit pathway as the southern portion of his land Block No. 69/2 has fallen to the share of his younger brother Wamanrao. During the pendency of the suit in the trial Court, two Commissioners were appointed to make a local inspection and to submit their report regarding the existence of a well beaten pathway on the northern side of the land of the defendant bearing Block No. 64/1 through which plaintiff claimed that he was entitled to reach his land and also about the existence of a cart track on the southern side of Rajaba's land bearing Block No. 64/2 through which access could be had to the land of the plaintiff and his younger brother Wamanrao. After the report of the two Commissioners, both parties also led oral and documentary evidence in proof of their respective contentions.

6. On an appreciation of the said evidence, learned trial Judge accepted the claim of the plaintiff and consequently, decreed O.S. 155/78 as prayed for and dismissed the other suit with which we are not concerned in this appeal. In the appeal filed by the defendant, the lower Appellate Court took a contrary view than the one taken by the trial Court and consequently allowed the appeal and dismissed the suit. In dismissing the appeal, the learned Civil Judge also made reference to the notes he had prepared at the time of his inspection of the alleged pathway and the neighbouring lands during the pendency of the appeal before him.

7. Normally, the finding recorded by the lower Appellate Court should have concluded the matter having regard to the limited scope of a Second Appeal under S. 100, C.P.C. But, after hearing this appeal for some time in the beginning of July, 1988, this Court (Mr. Justice P. K. Shyamsundar, J.) has observed in the order dated 13-7-88 that despite the reports of the two Commissioners appointed during the pendency of the suit in the trial Court and elaborate notes of inspection prepared by the learned Civil Judge after conducting a spot inspection at the request of both sides, a decision on the subject-matter of this appeal was still beset with lot of problems for which the evidence on record does not offer a satisfactory solution. Some attempt was made even at that stage to persuade the defendant to permit the plaintiff to have access through that part of

the track which lies within the contour of his land bearing Survey No. 64/1 without actually entering the land of the defendant in Survey No. 64/1. But, there was no possibility of an amicable settlement in that manner. After going through the oral and documentary evidence on record, it was found that there was total paucity of information touching the state of affairs that prevails on the bund running east to west and the northern border of defendant's land bearing Block No. 64/1. Therefore, this Court felt that the report submitted by both the Commissioners and the notes of spot inspection of the learned Civil Judge still left the matters in controversy between the parties very much in the dark. Therefore, this Court by order dated 13-7-88 directed the learned Munsiff to appoint a technically qualified surveyor as Commissioner with a direction to visit the spot after due notice to both parties and thereafter to prepare a plan of the territorial layout and make a report on the lines suggested in that order and also in the light of the memo of instructions which may be filed by both parties in the trial Court. A direction was also given to the Commissioner at the request of Sri U. L. Narayana Rao, the then learned counsel for the appellant-plaintiff to investigate into the prevalent controversy between the parties as to whether there was an alternative way providing access to the land abutting the properties of the plaintiff and the defendant situate to the south of Block No. 64/2. The same learned Judge has again passed another order on 12-10-88 wherein it is noted with anguish that the two brothers are bitterly contesting the right of one of them to use the small track said to be or not said to be lying within the holding of the other and even the report and the sketch prepared by the Commissioner appointed by the trial Court as per the order of this Court dated 13-7-88 revealed that there are some more areas which were still under the twilight zone and, therefore, it was necessary to call for further findings from the trial Court so that this long drawn dispute, which could have been settled amicably but unfortunately did not end in such a pleasant termination could be settled once and for all. It was also observed that if only the defendant-respondent had agreed to allow the plaintiff to traverse a small track of land indicated in the sketch everything would have ended on a happy note but, it could not end in that way. With the said observations, this Court again by order dated 12-10-88 directed the trial Court to make further investigation on the following two points after recording further evidence if need be and also taking the assistance of the Assistant Director of Land Records, Indi Division and to submit his report within two months. The two points on which fresh investigation was to be done by the trial Court read as under :

- (1) In the sketch referred to supra to whom does the portion north of letters B and T and F to M as also the stretch between MM and BT belong. The Court to ascertain and record a finding as to whether the stretch of the land in between these letters belongs to the defendant; and
- (2) Whether there exists any foot-path or cart track leading from the Kyathanakeri Deginal road towards south and through Survey Nos. 79, 78 and onwards leading to Survey No. 69/1?

8. Pursuant to the said order, the learned Munsiff has recorded fresh findings and has submitted his report in the form of an order dated 5-1-89 found at pages 44 to 45 of the Paper Book (for short "PB") wherein he has reported on point No. (1) that it was clearly established that the portion north of letters B & T and F to M and also the stretch between MM and BT shown in the sketch Ex. P. 6 dated 24-8-88 prepared by the ADLR, Indi belongs to the defendant and on point No. (2) that there does not exist any foot path or cart-track leading from DK road towards south and through Survey Nos. 79 and 78 and onwards leading to Survey No. 69/1. (Note: Survey No. 69," 1 ought to be Block No. 69/1).

9. Both parties do not appear to have filed any objections to the said latest report of the learned Munsiff dated 5-1-89. Therefore, Sri R. U. Goulay, learned counsel for the appellant-plaintiff, submitted that this appeal has to be decided on the basis of the latest report of the learned Munsiff and other materials on record to which he drew my attention without attaching much weight to the impugned judgment of the lower Appellate Court. On the other hand, Sri A. B. Patil, learned counsel for the respondent-defendant, submitted that since the question whether the plaintiff was entitled to make use of the suit pathway is a question of fact on which the lower Appellate Court has held against the appellant-plaintiff, this appeal does not involve any substantial question of law and as such it is liable to be dismissed.

10. Sri R. U. Goulay, made it clear at the time of arguments that the appellant-plaintiff was entitled to the reliefs he has sought in respect of the suit pathway under sub-sees. (e) and (f) of S. 13 of the Act and that apart, he did not argue that the plaintiff had acquired easementary right over the suit pathway by way of prescription under S. 15 of the Act. Relevant portion of S. 13 of the Act which bears the heading "Easements of necessity and quasi-easements" with illustrations (a) and (b) and read thus :

".....Where a partition is made of the joint property of several persons,--

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessary implied, be entitled to such easement.

The easements mentioned in this section, Cls. (a), (c) and (e), are called easements of necessity."

XX XX xx ILLUSTRATIONS

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of the fields, sells one to B, and retains the other. The field retained was, at the date of the sale, used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained."

Sri R. U. Goulay placed reliance on the observations made in the Commentary under Note 4 bearing the heading "Absolute necessity" at page 255 under S. 13 of the Easements Act in Katiyar's Easements and Licences, 8th Edition, 1975. Except noticing that Sri Goulay made reference to the said Commentary, I consider it quite unnecessary to make a detailed reference to the same as the law on the point is succinctly enunciated in a decision of this Court in *Mujoor Govinda Bhatta v. Mujoor Krishna Bhatta* (1969) 1 Mys LJ 226 on which reliance was placed by Sri A. B. Patil. In the said decision, reference is made to the above extracted provisions of S. 13(e) of the Act and it is then observed as under at pages 229 and 230:

"It is therefore obvious that the plaintiff, in order to claim an easement of necessity in terms of Cl. (e) of S. 33 of the Act, must show that the easement over the lands allotted to the defendant is necessary for the enjoyment of the lands allotted to his share and if he establishes that his lands cannot be used unless he makes use of the pathway S1, then he shall be entitled to the easement of necessity. This rule of law enunciated in Cl. (e) of S. 13 of the Indian Easements Act is the same as the rule of English Law relating to easement of necessity.

In *Sukhdei v. Kedar Nath* ILR (1911) All 467 it was held that an easement of necessity is an easement without which a property cannot be used at all, and not one merely necessary to the reasonable enjoyment of the property. Their Lordships in that case relied on the decision in *Wheeldom v. Burrows* (1879) 12 Ch 31 and quoted the observations of Lord Goddard which is as follows :

".....easement of necessity points to the fact that there must be absolute necessity before the law will compel a land owner to submit to so detrimental right as an easement in theory imposed on his land against his will. It must be borne in mind how detrimental generally, it is to an estate to be burdened with an easement, what a nuisance it is to an owner of land to have another person walking at his pleasure over a field, or digging through the surface, or erecting a steam-engine thereon, and how such rights may prevent building on land or using it in many of the ways the owner may desire".

Thus it is seen that before a person can claim a path-way as an easement of necessity over another man's land for reaching his own land, it is obligatory on him to show that that pathway is an absolute necessity for the enjoyment of his own lands. It should be noticed here that there is another pathway leading to the plaintiffs garden land. But it is said to be at a higher level and is inconvenient and difficult to be made use of. But this fact by itself would not entitle the plaintiff to claim a right of pathway over another man's land as an easement of

necessity. No Court will permit the creation of such a right unless it finds that the person claiming such an easement of necessity cannot use his lands without making use of the pathway claimed by him as an easement of necessity."

Sri A. B. Patil also placed reliance on a decision of the Madras High Court in *Mariyayi Animal v. Arunachala Pandaram* AIR 1956 Mad 584 and laid particular stress on the observations made in para 6 and 7 of the said decision. But, I consider it quite unnecessary to set out those observations in extenso in view of the above referred subsequent decision of this Court which is directly on the point. In the Madras decision, defendants in a suit for perpetual injunction restraining them from using a passage in front of plaintiff's house to go to the south into a public lane running west to west were the appellants. The salient observations made in the Madras decision with reference to Ss. 13 and 41 of the Act are : (a) a person claiming a right of way as an easement of necessity must prove that there is no other access to his property; (b) an easement of necessity is an easement without which the property cannot be used at all and not merely one for the reasonable enjoyment of the property and in considering questions of easements of necessity, convenience is not the test but absolute necessity. The necessity must be an absolute necessity and not a convenient mode of enjoyment of the property; and (c) necessity in the sense of being indispensable and without which the property could not be enjoyed at all must be established.

11. Sri R. U. Goulay, learned counsel for the appellant-plaintiff, placed reliance on a subsequent decision of this Court in *T. Ranganna Vs. Bhagirathi Bai and Another*, in which it is held that joint owners of the property, after partition must necessarily have the use of the only common lavatory for the enjoyment of their share to the property to the residential portion, and it will have to be held that even if the lavatory is situated in the portion of the property of one brother, the other brother had required easement of necessity and he has every right to sell this right when selling his share and the purchaser acquires this right after sale by virtue of S. 13(c) of the Act. It is further held in the said decision that the said easement of necessity stands when the necessity ends in view of S. 41 of the Act.

12. Let me now proceed to determine whether the plaintiff is entitled to the reliefs he has sought in respect of the suit pathway as an easement of necessity under S. 13(e) of the Act in the light of the law enunciated in the mentioned decisions and the subsequent material collected pursuant to the two orders of this Court referred to above.

13. Defendant having denied the claim of the plaintiff that he was making use of the suit pathway as an easement of necessity from the time of the original partition has pleaded in paragraph 3 of his written statement thus :

"At the time more than 100 years, plaintiff and his father and his brothers were using the way Deginal-Kyatanakeri road. After the completion of Block No. 64 they take turn towards East keeping the entire Block No. 64 on the left side and reach their land. There is a big cart road towards southern side of the Block Nos.

64 and 69. Plaintiff's brother and defendant's brothers recently partitioned. Plaintiff is a shrewd man who wants to take disadvantage of the innocent defendant and wants to create a new way in the fertile land of the defendant. So, defendant completely denies the allegations of using the way ABC neither by his parents nor by plaintiffs or by anybody."

14. Therefore, it is necessary to examine which of the said two versions is factually and legally sustainable in view of the divergent views expressed by the trial Court and the lower Appellate Court on this vital aspect. Ex. P6 is the latest sketch prepared by the Commissioner appointed by the trial Court pursuant to the order of this Court dated 13-7-1988. It shows the location of the lands of the plaintiff and the defendant. Existence of sufficiently a wide bund at the northern end of defendant's land bearing Block No. 64/1 and its user as pathway by the plaintiff is spoken to by P.Ws. 1 to 7 of whom P.W. 1 is the plaintiff and P.Ws. 3 and 4 are Court Commissioners appointed during the pendency of the suit in the trial Court (vide their depositions on pages 96, 97, 98, 99, 103, 104, 106, 108, 109, 110, 111, 112, 113, 115 and 116 of the P.B.). Defendant (D.W. 1) and D.Ws. 2 to 6 also admit the existence of the bund although they are not quite willing to admit that the plaintiff was using the bund to go to his land (vide their depositions at pages 119, 122, 124, 127, 130, 132, 133, 135 and 136 of the P.B.). It is not possible to reach plaintiff's land through the road side to be branching off from DK road and running east to west on the southern side of Block No. 64/2 of defendant's brother Wamanrao can be gathered from the evidence of D. Ws. 7 and 8 (vide their depositions at pages 138 to pp. 140, 141, 142, 144, 145, 148 bottom and 150 of P.B.). Added to that, the last sentence in the Court Commissioner's report Ex. P. 4 dated 23-9-78 reads thus (vide bottom of page 54 of the P.B.):

"Defendant could not show any beaten cart way to plaintiff's land though he tried to show."

Ex. P. 5 is the report dated 9-9-80 of the Court Commissioner in O.S. 163/78 in which defendant's brother Waman Rao was the plaintiff and the present plaintiff Baburao was the defendant. It reveals that there was no clear cut cart-track touching the southern side portion of Block No. 69/1 and 69/2; that towards the Southern side of plaintiff's land (Wamanrao's land), there was a cart-track up to the commencement of the plaintiff's land and then there is a foot path on both sides and thin grass is grown. After that, one big "nalla" is flowing at a depth of 4". After that, there is no clear cut cart-track towards the Southern side and the defendant's land. (Baburao's land). It is further stated in that report that there was no clear cut way as shown by the plaintiff (Wamanrao) to the lands of the defendants. Answers "given by the latest Commissioner H. S. Nagaral (P.W. 7) (ADLR, Indi) to the queries of the plaintiff herein (vide pages 159-160 of the P.B.) would reveal that cart cannot pass on the southern side of Block No. 69/2 along the portion indicated by letters MM and NN in his sketch as there is a steep slope having a width of 1 to 1 1/2 meter and depth of 2 1/2 meters from east to

west of Block No. 69/2 and water flows in that portion during rainy season and consequently there are crevices (Matter in vernacular omitted) and ups and downs in that slopy portion; that cart track does not go to Block No. 69/1 and there is about 15 years old big bund having a height of 1 1/2 meter in Block No. 69/2 along PP and QQ line and it progressively narrows down from the width of 2 1/2 meters at the commencement and becomes very narrow at the end and moreover, no cart can pass over that big bund as Block No. 69/2 is at a higher level than Block No. 69/1. The said Commissioner has stated in his answer to the queries of the defendant herein (vide pages 162 bottom and 163 of the P.B.) that there is a narrow foot path from DK road up to the hut of the owner of the land bearing Block No. 77 and not beyond that and it is not possible to have access to Block No. 69/1 through that footpath and no signs of any one going from that foot path to Block No. 69/1 were visible at the time of his visit.

15. Above all this, the learned Munsiff on a careful assessment of the fresh evidence collected by him pursuant to the order and direction of this Court dated 12-10-88 has held in his well considered 8 page order-cum-report dated 5-1-1989 in paragraph 10 thus:

".....there does not exist any foot path or cart track leading from Kyatankeri-Deginal road towards south and through Survey Nos. 79 and 78 and onwards leading to Survey No. 69/1. Hence, point No. 2 is answered in the negative."

It, therefore, follows that it is well nigh impossible to accept the above extracted defence of the defendant and to negative the claim of the plaintiff as has been erroneously done by the lower Appellate Court that the plaintiff has other alternative means of access to his land bearing Block No. 69/1. It, therefore, follows that plaintiff's claim that he is entitled to have access to his land bearing Block No. 69/1 by proceeding on the northern end of defendant's land bearing Block No. 64/1 as an easement of necessity under S. 13(e) of the Act deserves to be upheld.

16. In the result, the appeal is allowed, judgment and decree of the lower Appellate Court are reversed and the judgment and decree in O.S. 115/78 on the file of the Munsiff, Indi are affirmed in the following terms:

(a) Plaintiff is entitled to a right of way, for agricultural purposes only, over the northern end of defendant's land bearing Block No. 64/1 by proceeding along the suit pathway ABC and then along the footpath over the bund DEFG as shown in the suit sketch in order to have access to his land bearing Block No. 69/1 of Deginal village without entering upon and causing any manner of disturbance to defendant's possession and enjoyment of cultivable portion of his land in Block No. 64/1;

(b) Defendant is restrained by means of a perpetual injunction from causing any obstruction or disturbance to plaintiff's right to make use of the suit pathway on the northern end of his land bearing Block No. 64/1 as indicated in (a);

(c) Defendant is also directed by a mandatory injunction to remove obstructions, if any, he has created on the said pathway; and

(d) Having regard to the facts and circumstances of the case and the close relationship between the parties, they are directed to bear their own costs throughout with the hope that the two cousins will henceforth live like brothers forgetting and forgiving each other for their past bickerings and differences and spontaneously responding to each other's trials and tribulations by always remembering the Biblical saying : " "Love thy neighbour" is a moral injunction; "Do not harm thy neighbour" is a legal obligation."

17. Appellate allowed.