

(2012) 08 KL CK 0237
In the High Court Of Kerala
Case No : OP (C) . No. 1480 of 2011 (O)

Leelavathy Amma and Others

APPELLANT

Vs

Sethumadhavan and Others

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32

Citation : (2012) 08 KL CK 0237

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Rajit By, for the Appellant; K. Ramachandran By Advocate and Smt. S. Jayasree By Advocate, for the Respondent

Final Decision : Allowed

Judgement

Justice V. Chitambaresh

1. The suit was one for a declaration of a right of way and for prohibitory and mandatory injunction. The trial court initially dismissed the suit and the same was reversed in appeal and the suit decreed. The decree of the lower appellate court is as under:

The plaintiffs are granted a decree declaring their right for a pathway along the plaint B schedule with a width of 9 to 10 feet covering the eastern four concrete slabs and the blue striped and the eastern portion shown in Ext.C2 plan. The defendants are directed by a mandatory injunction to restore the blue striped portion as part of the pathway. The defendants are also restrained by a prohibitory injunction from obstructing the plaintiffs from using the pathway for which the declaration is granted.

The appellate decree was clarified in S.A.No. 1006 of 1989 by this Court by observing as follows:-

The lower appellate court while granting decree to the plaintiffs has left the width

of the way somewhat vague by stating that it will have a width of 9 to 10 feet. I think that it is necessary to clarify that the width of the way can be only 9 feet covering the eastern concrete slabs starting from the eastern most concrete slab. The defendants are directed to restore the blue shaded portion and the portion to its east so that the entire way will have a uniform width of 9 feet.

2. A reading of the decree of the lower appellate court and this Court shows that the plaintiffs have been given a right to use the plaint B schedule property as a pathway only. It necessarily follows that the way can be used for pedestrian traffic and no right for vehicular traffic has been granted under the decree. The petitioners/defendants have however no objection in the respondents/plaintiffs using the plaint B schedule property for taking vehicles including lorries. In other words the defendants have no objection to the plaint B schedule property being used for vehicular traffic as well.

3. The court below has by the order impugned directed an arch kept over the plaint B schedule property to be removed. Such an order has been passed in purported exercise of the powers vested under Order XXI Rule 32 of the Code of Civil Procedure. I am afraid that the execution court has exceeded its jurisdiction in giving such a direction. The court below has to probe as to whether any vehicular or pedestrian traffic is impeded by the placing of arch by the defendants. The court below has deputed Smt. P. Jayasree, Advocate as Commissioner to accompany the Amin to supervise the execution. The Amin as well as the Advocate Commissioner shall increase the height of the arch to such a level that lorry/bus/car is freely able to pass underneath along the plaint B schedule property. The width of the pathway shall also be kept at 9 feet as per the modified decree in S.A.No. 1006 of 1989 by this Court. The vehicles should be able to pass freely over the entirety of the width of the pathway and the arch need be pulled up if required for that purpose.

The impugned order of the court below is modified to the above extent. The original petition is allowed. No costs.