

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. No. 878 of 1998**

**BETWEEN**

**Gopichand Singh**

**Plaintiff**

**AND**

**The Incorporated Trustees of the  
Tackveeyatul Islamic Association of Trinidad**

**Defendant**

**Before the Honourable Mr. Justice Ventour**

**Appearances:**

Mr. Stanley Marcus SC and Mr. G. Armorer for the Plaintiff

Mr. B. Reid for the Defendant

**JUDGMENT**

The Plaintiff in this action is seeking from this Honourable Court a declaration that he is entitled to a right of way measuring 14 feet wide and extending from the Plaintiff's parcel of land across the Defendants' parcel of land to Boundary Road, Aranguez for the purpose of passing and re-passing by himself, his servants and licensees on foot and with motor vehicles or other means of conveyance at all times and for all purposes to and from the Plaintiff's said parcel of land.

The Plaintiff is also claiming an injunction restraining the Defendants by themselves their servants and/or agents or otherwise from placing or allowing to be placed picket fences across the 14 feet wide road which abuts the southern boundary of

All and Singular that parcel of land situate at Aranguez in the Ward of St. Anns in the island of Trinidad comprising 7,525 superficial feet measuring 45 feet on the northern boundary line and 46 feet on the southern boundary line and 175 feet on the eastern and western boundary lines known as lot 37 Satar Road, Aranguez (herein after referred to as “the said property”) and abutting on the north on Satar Road on the south upon lands of the Defendant on the east upon lot No. 35 Satar Road and on the west upon Lot 39 Satar Road, or in any way restricting, preventing or otherwise interfering with the reasonable enjoyment of the said road by the Plaintiff, his servants and licensees on foot or with motor vehicles or other means of conveyance at all times and for all purposes and from doing any act whereby the Plaintiff may be hindered or obstructed in full use thereof.

The Plaintiff also claims other consequential reliefs.

In his Statement of Claim filed on 3<sup>rd</sup> July, 1998 the Plaintiff is alleging that by a Deed of Assignment registered as No.853 of 1969 made between one Abdool Hamid on the one hand and the Plaintiff on the other, the Plaintiff became entitled as a tenant in common with the said Abdool Hamid to an undivided one half share in the residue of an unexpired term of twenty five years in the said property. The term commenced on 1<sup>st</sup> July, 1960.

The Plaintiff says further that by an agreement made between the said Abdool Hamid and himself it was agreed that the Plaintiff would occupy the southern half of the said parcel of land and in pursuance thereof the Plaintiff constructed his house thereon. The Plaintiff also alleges that from 1967 he was able to gain access to and from Boundary Road, Aranguez from his parcel of land by means of an access way measuring approximately 14 feet wide and abutting the southern boundary of the Plaintiff’s parcel of

land. The Plaintiff contends that since 1967 his licensees and permittees have had unhindered usage and access along the said way both on foot and by vehicles.

He further alleges that in or about 1986 having purchased the freehold interest in the said parcel of land he then proceeded in 1988 to improve the said access way by building a concrete bridge connecting the way to Boundary Road and by paving the said right of way with quarry stone and pitrun. He then contends that on or about 1<sup>st</sup> April, 1998 the Defendants, their servants and/or agents obstructed the said right of way by placing picket fences along the access road in front of the Plaintiff's driveway thereby preventing the Plaintiff from using the said way as he formerly did.

Finally he alleges that the Defendants have since threatened and intends to continue the said obstruction to prevent the Plaintiff or his licensees or permittees from using the said way.

By their Defence the Defendants have taken issue with the facts upon which the Plaintiff has formulated his case. The Defendants have denied that the Plaintiff has had unhindered access to and from his home by use of the said road way since 1967. They have argued that the concrete bridge which the Plaintiff alleges was built in 1988 connecting the way to the boundary road and the paving of the said way with quarry stone and pitrun was in fact built by the Plaintiff shortly after October 1991 and they have admitted that it was only since that date that the Plaintiff has passed and re-passed over and along the said bridge and the paved roadway to gain access to his parcel of land.

The Defendants further contend that the building of the bridge and the paving were done on the Defendants' parcel of land which they hold as lessees from the State by Deed of Lease registered as No.707 of 1966. Consequently, the Defendants have denied

that the Plaintiff is entitled to a right of way over the said bridge and the paved roadway built on the Defendant's property.

The Defendants have further contended that on or about the 1<sup>st</sup> April, 1998 the Plaintiff unlawfully prevented the Defendants' contractor and/or servants or agents from erecting a fence along the northern boundary of the Defendants' property enclosing the area of land in dispute. In the premises the Defendants have counterclaimed for the following reliefs against the Plaintiff:

- (1) An injunction restraining the Plaintiff by himself, his servants and/or agents whether on foot or with motor vehicles from passing or re-passing over the Defendants' property and from preventing the Defendants, their servants and/or agents from erecting a fence along the northern boundary of the Defendants' property;
- (2) Damages for trespass; and
- (3) Cost.

The Plaintiff in his Reply and Defence to the Counterclaim joins issue with the Defendants and more particularly makes no admission to any of the matters raised in the Defendants Claim and Counterclaim filed on 12<sup>th</sup> October, 1998.

The issues that arise on the pleadings could be identified as follows:

- (1) Has the Plaintiff acquired by way of prescription a right of way measuring 14 feet wide over the Defendants' property as a means of accessing his property at No.37 Satar Road from Boundary Road by foot and by motor vehicles;
- (2) If the answer to (1) above is in the affirmative have the Defendants obstructed or attempted to obstruct the Plaintiff's enjoyment of that right of way;

(3) If the answer to (1) above is in the negative did the Plaintiff's action in paving the roadway amount to a trespass on the Defendants' land;

I am going to examine the evidence put before the Court in order to make a finding of fact on the said issues.

**The Plaintiff's evidence**

The Plaintiff's evidence is that since 1967 he has been in occupation of the said property which he shared as tenant in common with one Abdool Hamid (see exhibit "GS 1") by Deed registered as No.853 of 1969. He subsequently purchased the southern half of the said property upon which he then constructed his house for his family. From the property known as No.37 Satar Road, San Juan the Plaintiff has had access to Boundary Road via Satar Road and also through a dirt track to the south of the Plaintiff's property over the Defendants land.

The Plaintiff said that when he first went to live on the premises there was a lot of bush covering the track and that he had to cut down the bush and weed out the area. He said he burnt the bush and had the area thoroughly cleared. There was a drain about 4 feet wide covered with concrete sleepers which were all broken up. Since he had to cross the drain to get on to Boundary Road he purchased the necessary material and he built a proper concrete bridge sometime around 1988. Sometime later he paved the track using pitrun and stone and had it transformed into a proper roadway to accommodate motor vehicles. He said in evidence that if the Defendants are allowed to continue with the erection of their fence along the northern boundary they would be obstructing the use of his driveway.

Under cross-examination by Counsel for the Defendants the Plaintiff insisted that he started using the dirt track since 1967. He said that at the time it was about 5 feet wide. He said that he did not tell his Attorney-at-Law that the track was 14 feet wide. This denial was obviously in relation to the Plaintiff's pleading that he and his licensees have had access along the said right of way by foot and by vehicles since 1967. When pressed further the Plaintiff said that he did not tell his Attorney that people have had access to his property on foot and motor vehicles from as far back as 1967.

The Plaintiff dismissed the suggestion made by Counsel for the Defendants that he could not have used the access way between 1967 and 1991 because during that period the area was under cultivation. He admitted however, that only a certain area was under cultivation and that at the side of the cemetery wall there remained a dirt track which he used to access the southern entrance of his property from Boundary Road.

Amar Singh the son of the Plaintiff testified in support of his father's claims. He is thirty-three years old and he recalls that as a little boy he attended the nearby Aranguz Islamic School and he too used the dirt track to get to and from school. Several photographs of the access way were tendered into evidence by consent through this witness. (See exhibits "AS 1-7"). He testified that cars have driven in and out of the dirt track. Under cross-examination however, he denies that one Mr. Boysie Mohammed planted any vegetation between the school fence and the cemetery wall between 1967 and 1991.

The other witness for the Plaintiff was one Ms. Sherina Abdool a Public Officer attached to the Ministry of Finance and a neighbour of the Plaintiff. Ms. Abdool said that she attended the Aranguz Islamic Primary School since 1965 and while attending that

school she and the other children use the foot path as a short cut. She lived at No.35 Satar Road since 1962. She said in those days it was a foot path and using it was like walking through grass. She said that sometime later the Plaintiff developed it so that cars could drive on it. This witness testified that it was not until 1987 that she saw motor vehicles using the roadway. When questioned further by Counsel for the Defendants she denied that between 1967 to 1991 the disputed area between the cemetery wall and the school fence was under cultivation of any sort. She said further that there was no wire mesh or vegetation cuttings blocking the exit or the entrance to and from the southern boundary of the Plaintiff's property to Boundary Road.

The final witness for the Plaintiff was one Mr. Sarjoo Sant a tractor driver who lived on Hingoo Lane off Boundary Road Extension, El Socorro, San Juan. Mr. Sant has been a tractor driver since 1956 and he testified that he started working for Mr. Boysie Mohammed (popularly known as Mackie) since round 1970 and continued through to 1992 when Mackie stopped cultivating the lands to the east of the school. Mr. Sant said that in order to access the piece of land to the east of the school he drove his tractor over the dirt track immediately south of the cemetery wall. He admitted also using the road reserved to the south of the school to access the cultivated area to the east. He said further that the dirt track to the north of the school was about 4 to 5 feet wide and that that area was at no time between 1970 and 1991 under any cultivation nor was there any barrier parallel to Boundary Road extending from the cemetery wall to the school fence.

### **The Defendants Evidence**

The evidence presented to the Court on behalf of the Defendants was materially different from that of the Plaintiff and his witnesses. Mr. Ferose Mohammed the Principal of the Aranguez Islamic School since 1996 and a Teacher since 1981 testified that he is very familiar with the area. He lives a stone throw away and grew up as a child in the area. Mr. Mohammed tells the Court that between 1981 and 1991 the disputed area was under cultivation with various vegetable crops by Mr. Boysie Mohammed (Mackie). Mr. Mohammed said that as far as he is aware no one passed along the strip of land during the period of cultivation because they would have had to climb over the 6 foot barrier which was constructed by Mackie blocking off the entrance from Boundary Road to access the disputed area.

He also said that because of the barrier it would have been impossible for vehicular traffic to access the dirt track between 1967 and 1988. He testified that in the very early stages there was no sign of vehicles using the track and that use of the roadway would have started sometime in 1991. He said that in 1998 when workmen employed by the Defendants to erect iron posts along the northern boundary they were forced to stop the project because of an altercation with two of the neighbours. He admitted however under cross-examination that the first time he had seen the barrier was in 1991.

Mr. Raphic Ali and Mr. Boysie Mohammed two other witnesses for the Defendant who lived in the area, corroborated the testimony of Mr. Ferose Mohammed. Mr. Ali a past Principal of the Aranguez Islamic School and a retired School Supervisor said that he had been Principal of the School from 1959 to 1980. He said that the new school on Boundary Road was built around 1965 and that the school fence was erected about 30 to 40 feet away from the cemetery wall to the north of the school building. The

strip of land which is now the disputed area was at the time covered with bush and around 1967 one Boysie Mohammed who was at the time employed as a cleaner with the school had sought and obtained permission to cultivate the strip of land and he did so up to the time that he (Mr. Ali) left in 1980. He said that Mr. Boysie Mohammed had erected a barrier about 4 to 5 feet tall on the eastern side of the drain that separated Boundary Road from the strip of land. Mr. Ali was certain that prior to 1980 when he resigned as Principal of the school there was no access way from Boundary Road to the home of the Plaintiff through the Defendants' land.

Mr. Boysie Mohammed lives at No. 5 Satar Street, Aranguez. He has been a janitor employed with the Aranguez Islamic School since 1966. He testified that he was very familiar with the disputed strip of land which he had cultivated from 1966 to 1991. He said that he had erected a barrier in 1966 to secure some measure of privacy for the area he had been given permission to cultivate by the School Principal. For that purpose he used galvanise, mesh wire and old melongene plant which extended from the cemetery wall to the school wire fence. He said that the barrier stood about 7 feet tall. Some time in 1991 he said that the barrier was removed and that the area of land was cleared; gravel was spread along the roadway and he observed the Plaintiff passing and re-passing both on foot and by motor vehicle on the said strip of land.

Mr. Mohammed also gave evidence of his relationship with Mr. Sarjoo Sant who he said he employed from time to time to till the land which he (Mr. Boysie Mohammed) had been licensed to cultivate. He said it was around 1970 when he first engaged the services of Mr. Sant who used a tractor and would pass on a private road to the south of the school to access the strip of land to the east and to the north of the school for the said

purpose. He denied that Mr. Sant ever used to access the land from Boundary Road through the disputed area.

Mr. Mohammed insisted under cross-examination that he had planted seven wooden posts firmly into the ground using a type of wood called mora which measured 2 ins x 3 ins. He said he nailed the mesh wire and the galvanise on the wooden post and used pieces of wire to tie the galvanise to the school wire fence. He estimated the distance between the cemetery wall and the school wire fence to be about 30 or 35 feet. He said that the barrier stayed up for many years until it was removed in 1991.

The final witness for the Defendant was one Mr. Paul Williams a qualified Land Surveyor and an Aerial Photographer. In looking at the aerial photographs taken of the disputed area and its surroundings Mr. Williams was able to point out that in the 1994 photograph the track is quite visible (see exhibit "C") but that no such track could be identified in the 1986 aerial photograph (see exhibit "B"). In fact in the latter exhibit Mr. Williams explained that organised vegetation is reflected in the area where the track is identified in exhibit "C".

Mr. Williams explained to the Court that if an aircraft is flying at a height of about 10,000 feet above sea level it is possible to detect objects photographically on the ground one foot in height and as much as half a foot in height if the aircraft flies at a height of 5,000 feet. He said that aerial photographs could also detect foot paths and tracks measuring 4 to 5 feet in width depending on the scale of the photograph. However Mr. Williams examined exhibit "C", an aerial photograph which was taken in 1986 but he was unable to detect any track or foot path in the area between the cemetery wall and the school fence. Instead he did confirm that the area in dispute was covered with organised

vegetation. He also observed that the area east of the school was also cultivated. He said a track or foot path 4 to 5 feet in width would have shown up in the photograph whether it was paved or gravelled.

In contrast Mr. Williams said that exhibit "D" another aerial photograph which was taken in 1994 showed quite clearly a foot path running from east to west next to the cemetery wall. An earlier aerial photograph taken in 1967 (exhibit "F") did not reflect any foot path neither did an enlarged photograph of the particular area (see exhibit "G") according to this witness. Another enlarged photograph of the area taken in 1975 did not reveal any fence extending from the cemetery wall to the school fence running parallel to Boundary Road. The witness said that it could not have been dead vegetation in that area and when he looked through his stereoscope he said it looked like bush which he measured to be about 4 feet in height using an instrument called a stereoplotter. Under cross-examination Mr. Williams admits that the light area identified in exhibit "G" leading to the school and curving left in a westerly direction is a walkway running parallel to the school fence and leading around the school. He did not say how wide that foot path was.

#### **Submissions by Counsel for the Plaintiff**

On the evidence presented before the Court Counsel for the Plaintiff has submitted that the Plaintiff has not established that he used the access way by vehicles prior to April of 1982. Counsel submits however that on the totality of the evidence the Plaintiff has proved on a balance of probability that he did pass on foot over the Defendants property from his home to Boundary Road since the year 1967 without interruption and accordingly the Plaintiff is entitled to the injunctive reliefs sought to protect the use of the right of way. Counsel has conceded however that the Plaintiff has committed a trespass

when he sought to pave with pitrun and gravel an area of the Defendant's property which extended beyond the right of way used to pass and re-pass on foot.

### **Submissions of Counsel for the Defendants**

Counsel for the Defendants however contends that the Plaintiff has failed to discharge the burden which the law has placed on him to establish a right of way over the Defendants property. Counsel relies heavily on the testimony of Mr. Williams and the aerial photographs tendered into evidence which showed that the disputed area was cultivated between 1967 and 1991 and did not facilitate any right of way allowing the Plaintiff and his licensees to pass and re-pass over the Defendants' property to access Boundary Road to the north of the school premises. Counsel submits that the Plaintiff's case fails completely but argues that if on the evidence the Court finds that there is in fact a right of way such access is limited to foot only since the Plaintiff has not established use of the access way by motor vehicles for a period of more than sixteen years. In the circumstances Counsel contends that the Plaintiff committed a trespass when he sought to put down pitrun and gravel on the right of way which extended in width beyond the foot path. In support of his submissions Counsel referred the Court to the following authorities:

**(1) Bernard & Bernard –vs- Hiliare (1968 - 1969) 13 WIR 501.**

**(2) Mills –vs- Silver (1991) 1 AER 449; and**

**(3) Michel –vs- Augier (1993) 46 WIR 143 at page 148.**

Counsel has also submitted that there is no evidence before the Court that the Defendants committed any trespass against the Plaintiff which is actionable in law.

### **The Court's Assessment of the Evidence**

On the evidence before this Court I think that Counsel has properlyly conceded that the Plaintiff has failed to prove his use of the access way 14 feet wide on foot and with motor vehicle for the period of time alleged in his Statement of Claim. In that regard the evidence put before the Court by the Plaintiff does not support his case as pleaded to the effect that he has had since 1967 unhindered usage of the said roadway for himself, licencees and permittees on foot and by motor vehicles. See paragraph 4 of the Statement of Claim filed on 3<sup>rd</sup> July, 1998.

The testimony of Mr Sarjoo Sant that he used his tractor to enter the western end of the disputed area from 1970 for the purpose of tilling the soil for Boysie Mohammed in that very area and also on the eastern side of the school could not have been intended to establish the usage of the access way by motor vehicles.

That evidence was adduced it appears to this Court to disprove the allegation of the Defendants that Boysie Mohammed had built a barrier running parallel to Boundary Road from the cemetery road to the school fence on the western end of the disputed area. Boysie Mohammed had testified that he had planted seven wooden posts firmly into the ground to which he had tied mesh wire and attached galvanise sheets and had put together in a mound dead vegetation plant to secure privacy of the cultivated area. While I am prepared to accept Boysie Mohammed's evidence that he cultivated the area with certain vegetable crops from 1967 until 1991 I do not accept his testimony that the barrier was constructed in such a manner and at such a height that it prevented anyone from passing and re-passing over the land of the Defendants. Indeed, it is surprising that none of the aerial photographs was able to reflect the barrier and any of the 6 foot wooden posts which Mr. Mohammed said he had planted in the area while according to the

evidence of Mr. Paul Williams the aerial photographs were able to detect bush and vegetation 4 feet in height in that very area. I believe that if a barrier was built at all by Mr. Mohammed it did not prevent the Plaintiff from passing and re-passing over the land of the Defendants on foot from the South of his home to access Boundary Road.

The Plaintiff's testimony is that from 1967 he began using the access way. I must admit that the Plaintiff appeared very confused at one point under cross-examination admitting and then denying in the same breath that he had told his Attorneys that he had used the access way which measured 14 feet wide since 1967. Counsel for the Defendants however, succeeded in having the Plaintiff admit that the access way was only about 5 feet wide before he had cleared the bush in 1987 or 1988 after which it was able to accommodate motor vehicles of one type or another.

**Was the disputed area ever cultivated?**

The Plaintiff admitted under cross-examination that prior to 1987, 1988 the disputed area was only partially cultivated and he insisted that the dirt track at the side of the cemetery wall was never under cultivation during that time. This admission is important and did go a long way in supporting the Defendants' claim that the access way was under cultivation during the period 1967 to 1991. All the Plaintiff's witnesses sought to deny that the disputed area was ever cultivated during the said period but in light of the Plaintiff admission I have had little difficulty in rejecting their testimony in that regard and I hold that the area was under cultivation between the period 1967 – 1991.

Miss Abdool who lived next door to the Plaintiff and who has been living there since 1962 testified that as a child attending the Aranguz Islamic School she used the track for as short cut. She said that the track was about 2 feet wide at the time and she also

testified that walking through the track was like walking through grass. That bit of testimony gives this Court the impression that the grass actually covered the dirt track. Such conditions may have accounted for the aerial photographs taken in 1967 and again in 1984 not having reflected the access way. Mr. Williams however was only able to detect an ill-defined line close to and running parallel to the cemetery wall in the 1986 photograph. Ms. Abdool's evidence is that only after the Plaintiff developed the area was it in a condition to accommodate motor vehicles.

Mr. Sant's evidence is that he used to pass along the disputed area with his tractor and that the dirt track was about 4 to 5 feet in width before the area was cutlashed and cleared. On the evidence presented to this Court on behalf of the Plaintiff I have found as a fact that the Plaintiff did pass and repass on foot only along the track over the Defendants' property to get to and from his home from Boundary Road. Unfortunately there has been no consistency in the measurement of the width of the track coming from those witnesses who have used the track at some time in the past. One would recall that the Plaintiff put the width at about 5 feet while his other two witnesses Ms. Abdool and Mr. Sant put the width at 2 feet and 4 to 5 feet respectively. I consider 4 feet to be reasonable having regard to the intended usage.

### **The Law**

A right of way is a particular type of easement. It is accepted in law that to qualify as an easement there must be a servient tenement which is used to accommodate the dominant tenement; both the dominant and the servient tenement must have different owners. See the case of **Re: Ellenborough Park, Powell –vs- Maddison (1955) 3 AER 667 at page 673 per Evershed MR.** A private right of way creates a right to utilise the servient

tenement as a means of access to or egress from the dominant tenement for some purpose connected with the enjoyment of the dominant tenement according to the nature of that tenement. See **Cannon –vs- Villars (1878) 8 Ch. D. 415** and also **paragraph 144 of Vol.14 of Hallsbury’s Laws of England (4<sup>th</sup> Edition)**. By statute however a person claiming a right of way must prove that the use of that right of way has been enjoyed without interruption for a full period of sixteen years. Section 2 of the Prescriptive Ordinance Ch. 5 No.8 (the Ordinance) states:

**“When any claim shall be made to any right of common or pasture, or other profit or benefit, except rent and services, or to any way or other easement, or to any water-course, or the use of any water, to be taken or enjoyed or derived upon, over, or from any land or water of His Majesty, or of any body corporate or person, and such right of common or other matter as herein before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of sixteen years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.”**

On the evidence this Court is satisfied that the requirements of Section 2 of the Ordinance have been satisfied and that the Plaintiff who owns the dominant tenement (see exhibit “CS 1”) has acquired a prescriptive right on foot over such portion of the servient tenement (see exhibit “E”) owned by the Defendants measuring 4 feet in width commencing from the southern boundary of the Plaintiff’s property and exiting on Boundary Road.

Does the Plaintiff have the right to extend the width of such a right of way? The case of **Bernard & Bernard –vs- Gennings & Halaire (1968 – 1969) 13 WIR 501** establishes in no uncertain terms that the Plaintiff cannot lawfully increase the burden of the servient tenement by extending the use of the right of way on foot to include use by motor vehicles. See also the case of **Michel –vs- Augier (1993) 46 WIR 143 at page 148**. While it is lawful for the owner of the dominant tenement to keep in a state of repair his right of way he is certainly not entitled to effect improvements which will serve to benefit the dominant tenement to the detriment of the servient tenement since in law the extent of the prescriptive right of way is limited by the nature of the user from which it has arisen. This principle was enunciated in the case of **Mills –vs- Silver (1991) 1 AER 449**.

I do not consider it necessary to find as a fact whether the Plaintiff sought to develop the dirt track with pitrun and gravel in 1987/1988 as he has alleged or in 1991/1992 as alleged by the Defendants. For the purpose of deciding the issues in this case it matters not whether the laying of pitrun and gravel was in 1991 or as early as 1987.

It is clear that having regard to the findings of fact in this case the first issue identified earlier in this judgment has been resolved partially in favour of the Plaintiff. Therefore in addressing the second issue this Court has to decide whether the Defendants' obstructed or attempted to obstruct the Plaintiff's use of the right of way by foot. There was no evidence coming from the Plaintiff that he was actually prevented by the Defendants from using the right of way by foot.

In fact the Plaintiff did testify that if the fence is put up it would obstruct his driveway. In any event it is for the Plaintiff to establish that the interference of his enjoyment of the right of way on foot by the owner of the servient tenement was substantial to justify any relief in law. Mere inconvenience is not sufficient. This is what Lord Cozens-Hardy, M.R. had to say at page 662 in the case of **Pettey –vs- Parsons (1914) 2 Ch. 653:**

**“Any appreciable obstruction in a highway can be prevented by indictment or otherwise, but in the case of a private right of way the obstruction is not actionable unless it is substantial. There must be a real substantial interference with the enjoyment of the right of way.”**

I am afraid that on the evidence in the instant case there has been no substantial interference of the enjoyment of the right of way on foot by the Plaintiff. Consequently, I do not agree that the Plaintiff is entitled to the injunctive relief sought in his Statement of Claim. See the case of **Bernard –vs- Jennings (1968) (supra)**.

Dealing with the final issue, it would appear that the laying of the pitrun and the gravel by the Plaintiff for the specific purpose of improving the condition of an access way measuring 14 feet in width and which the Plaintiff was not lawfully entitled to do is an unlawful interference with the Defendants’ property and therefore a trespass in law. See the case of **Mills –vs- Silver (supra)**. But the Defendants have not produced any evidence of damages suffered as a result and therefore will only be entitled to nominal damages in the circumstances. Accordingly the Court will make the following declaration and orders:

- (1) A Declaration that the Plaintiff is entitled to a right of way measuring 4 superficial feet in width and extending from the Plaintiff's parcel of land across the Defendants' parcel of land to Boundary Road, Aranguéz for the purpose of passing and re-passing by himself, his servants and licensees on foot at all times from the Plaintiff said parcel of land;
- (2) The Plaintiff to pay to the Defendants damages for trespass in the nominal sum of \$500.00;
- (3) In the circumstances of the case and having regard to the decision of the Court I believe that it will be just and fair that there be no order as to costs.

**Dated this 8th day of November, 2000**

**Sebastian Ventour  
Judge**