

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

CRP.No. 251 of 2004 ()

IN CMA 24/2001 of SUB COURT,THODUPUZHA DATED 31-01-2003
ORDER IN I.A. NO. 568/1994 IN OS 103/1994 of MUNSIFF COURT, DEVIKULAM

REVISION PETITIONER(S)/APPELLANTS/RESPONDENTS:

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1. MADASWAMY S/O. PAKKUMUTHU, CHATTA MUNNAR
LOWER DIVISION, THALAYAR ESTATE, K.D.H.VILLAGE.
 2. MURUGAN S/O. MADASWAMI, CHATTA MUNNAR,
LOWER DIVISION, THALAYAR ESTATE, K.D.H.VILLAGE.

BY ADV. SRI.SATHISH NINAN

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

M/S. TALAYAR TEA CO. LTD., REPRESENTED
BY ITS GENERAL MANAGER, SRI P.T.NADARAJAN
ESTATE OFFICE, THALAYAR .P.O, . K.D.H.VILLAGE.

R1 BY ADV. SRI.M.NARENDRA KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
23-06-2015, ALONG WITH CRP. 559/2004, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

ds

P.BHAVADASAN, J.

C.R.P. Nos. 251 & 559 of 2004

Dated this the 23rd day of June, 2015

ORDER

These two revision petitions are directed against the order in I.A.No. 568/1994 in O.S.No. 103/1994 as confirmed in C.M.A.No. 24/2001 and the order in I.A.No. 569/1994 in O.S.No. 103/1994 of the Munsiff's Court, Devikulam as confirmed in C.M.A.No. 25/2001.

2. The facts absolutely necessary for the disposal of these revision petitions are as follows:

The plaintiff instituted a suit for permanent prohibitory injunction and realisation of damages as O.S.No. 103/1994. Along with the suit, they have moved for temporary injunction which was granted. Subsequently, it was found that in violation of order of this Court, construction had been carried on and therefore the plaintiff moved two interlocutory applications namely I.A.Nos. 568/1994 and 569/1994; one for temporary injunction and the other for

mandatory injunction. These two I.A.s were tried along with the suit and evidence was adduced in the suit.

3. In the plaint, the plaintiff claimed that he is in absolute owner in possession of two cents comprised in Survey No. 29/1 of KDH Village. The plaintiff claimed it to be a part of the estate belonging to them. According to the plaintiff, the defendants have no manner of right or title over the suit property. The first defendant is the permanent worker of the plaintiff company and the second defendant is the son of the first defendant. It is also claimed in the plaint that the plaint schedule property is well demarcated and identifiable from rest of the properties. By an error committed by the defendants in the suit, a loss to the tune of ₹ 500/- had been caused to the plaintiff. The defendants attempted to construct a shed in the property which was prevented by the timely intervention of the plaintiff. If the defendants are allowed to continue their mischiefs, that will cause irreparable loss and injury to the plaintiff. On the

basis of these allegations, the suit was laid as already stated, interim order was obtained in the interlocutory applications.

4. The defendants resisted the suit. They contended that they had absolute possession of two cents of land comprised in Survey No. 29/2 which lies adjacent to the plaint schedule property. They contended that the property in possession and enjoyment of the defendants is in Survey No. 29/2 and it is not included in the property belonging to the Estate. The defendants denied that they had ever attempted to trespass into the plaint schedule property. They also pointed out that they have initiated L.C. proceedings, as L.C.No. 14/1992 for assignment of two cents of land in their possession and enjoyment and had paid ₹111/- on 21.02.1992. The first defendant had availed of a loan for reconstruction of the building situated in the property and when he started the reconstruction, the plaintiff filed the suit and obtained an interim order of

injunction. The defendants specifically denied that they had done any act of mischief in the property comprised in Survey No. 29/1 and they contended that their absolute right and possession was confined to the property comprised in Survey No. 29/2.

5. Issues were framed and parties went to trial. The suit was dismissed.

6. However, I.A.Nos. 568/1994 and 569/1994 were independently considered as it is well settled that the mere fact that the suit is dismissed, does not mean that the violation of the interim order passed by the court can be overlooked.

7. The allegation was that in flagrant violation of the interim order passed by the court, subsequent construction was completed during the pendency of the suit.

8. The interim order was passed on 07.04.1994 restraining the defendants from trespassing into the plaint schedule property and putting up any structures thereon.

The allegation was that in violation of the order of injunction, they trespassed into the property comprised in Survey No. 29/1 on 2.7.1994 and 3.7.1994.

9. The application of violation of injunction was sought to be resisted by the respondents by pointing out that there was no willful violation of the interim order and they were under the bonafide belief that they carried out construction in Survey No. 29/2 and not in Survey No. 29/1 which was claimed by the plaintiff.

10. It is not in dispute that the two properties, namely, property in Survey Nos. 29/1 and 29/2 are lying adjacent to each other. PW5, the Taluk Surveyor had prepared Ext.C3(a) plan and PW4, the Commissioner had filed Exts. C1 to C3 report after visiting the properties. The evidence in the case show that properties involved in the suit was a part of Taliar Estate and the defendants had no manner of right over the same. Even though such a claim was made, it was ultimately found that the defendants are in possession of the

suit property and suit was dismissed.

11. However, the court below found that in gross violation of the interim order of injunction, the defendants had put up structures in the property and that could not be condoned.

12. It is a fact that the suit was dismissed and the appeal preferred was also dismissed, finding that the defendants were in actual possession of the suit property on the date of the suit. However, that does not mean that they can, in gross violation of the interim order, carry on constructions when there was specific order restraining them from doing so. Finding that there was violation, they were asked to pull down the structure within a period of 15 days from the date of the order and to file an affidavit to that effect, failing which, the defendants 1 and 2 were directed to detain in Civil prison for two months and it is also directed that their property shall be attached as per law and the petitioner is entitled to demolish the construction. It is

also directed that the petitioners are entitled to realize the costs of ₹500/-.

13. Even though the aggrieved respondents preferred two C.M.A.s against prohibitory and mandatory order of injunction, they did not succeed.

14. In these revision petitions, the learned counsel appearing for the petitioners pointed out that true, technically speaking, there may be violation of the interim order of injunction. But it has been noticed, according to the learned counsel, that the defendants were always under the bonafide impression that they were occupying property comprised in Survey No. 29/2 and they had applied for assignment of the land as per L.C.No. 14/1992. It is significant to notice, according to the learned counsel, that the defendants were laying claim on property comprised in Survey No. 29/2 and not on property comprised in Survey No. 29/1. Unfortunately for them, it was found that the property they occupied was in Survey No. 29/1 and also

part of the Estate. It was under the bonafide belief that they were occupying the different property which did not belong to the Estate that the constructions had been made. Therefore, it could not be said that there was any willful disobedience.

15. The learned counsel appearing for the respondent on the other hand contended that even assuming that the suit is dismissed and the appeal is also dismissed finding that the defendants are in actual possession of property as on the date of the suit, that does not mean that they could violate the interim order of injunction with impunity. The violation of interim injunction stands on a different footing and that has to be considered independently, irrespective of the result of the suit. That is what has been precisely done by the court below and it has been found that, that was in gross violation of interim order of injunction. It was therefore rightly directed to pull down the structure.

16. True, technically speaking, there is a violation of interim order of injunction. It was also to be borne in mind at this juncture that the defendants were under the bonafide belief that they were occupying property comprised in Survey No. 29/2 and they did not know that they are in actual physical occupation of property comprised in Survey No. 29/1 which formed a part of the Estate. It was only after measurement, it was found that the petitioners are occupying property comprised in Survey No. 29/1. It is to be noticed that in the plaint, it is stated that the property of the Estate is well demarcated. The defendants have contended that they had never attempted or trespassed into any portion of the Estate property and they were in possession of property in Survey No. 29/2 occupying two cents of land and in relation to which, they had applied for assignment of land under the Kerala Land Assignment Act as per L.C.No. 14/1992. Even at the time when the suit was laid, the basement had already been put up and the super structure

had been put up subsequent to the order of injunction. It must be noticed that the defendants were under the bonafide impression that they were occupying a property different from the property claimed by the plaintiff.

17. It was only after the survey measurement and Commissioner's report, they realized that the property over which they laid claim was part of the Estate.

18. What is significant is that the suit was dismissed finding that the defendants were in actual physical possession of the property as on the date of the suit. Here, one cannot omit to note that the claim in the plaint was that defendants were attempting to trespass into the plaint schedule property and putting up constructions thereon. This allegations cannot be lost sight of. The plaintiff was unable to prove his possession over the suit property. There is nothing to show that as on date, the suit for recovery of possession has also been laid. In the light of these facts, it could not be technically said that there was any willful

violation of the order of injunction. Even assuming that there was some violation since the plaintiff was found to be not in possession of the property and since no suit for recovery of possession has so far been laid, there is no meaning in asking the defendants to pull down structure since being in actual possession of the property, they could again put up the structure in view of the fact that the suit has been dismissed.

19. For the above reasons, it is held that there was no willful disobedience of the order of the court below or in other words, there was no willful violation of the interim order of injunction and it could not be said that there was no bonafides in the act of putting up the structure. True, this Court is not forgetting the fact that ultimately, on survey measurement and Commissioner's report, it was seen that the property belonged to the Estate. Whatever that be, it is clear that the structures were put up under the bonafide impression that they were occupying the property in Survey

No.29/2 in relation to which land assignment proceedings were initiated by them.

For the above reasons, these petitions are allowed and the impugned orders are set aside and the I.A.s stand dismissed.

Sd/-
P.BHAVADASAN
JUDGE

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P.A. to Judge