

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

FAO.No. 209 of 2012 ()

(I.A.1961 & 1967 OF 2011 IN O.S.292 OF 2011 ON THE FILE OF THE SUB COURT, MANJERI.

APPELLANT(S)/RESPONDENT NO.2/2ND DEFENDANT:

KUTTANKAVIL SHAMSUDHEEN AGED 41 YEARS
S/O. ASSANKUTTY HAJI, ZEENATH MANZIL
KONDOTTY AMSOM DESOM, KONDOTTY POST, ERNAD TALUK
MALAPPURAM DISTRICT.

BY ADVS.SRIJOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE
SRI.K.S.SUMEESH
SRI.T.ANCY

RESPONDENT(S)/PLAINTIFF/1ST DEFENDANT:

1. SAINABHA, AGED 53 YEARS
W/O. PUTHIYAVEETIL.P.A. ABOOBACKER
D/O. THOPPIYIL SAIDU, KONDOTTY AMSOM, KOLATHUR DESOM
THURAKKAL POST, ERNAD TALUK
MALAPPURAM DISTRICT-673638.
2. PUTHIYAVEETIL FAISAL, AGED 26 YEARS
S/O. PUTHIYAVEETIL.P.A. ABOOBACKER, KONDOTTY AMSOM
KOLATHUR DESOM, THURAKKAL POST, ERNAD TALUK
MALAPPURAM DISTRICT-673638.

R1 BY ADV. SRI.N.SUBRAMANIAM
R1 BY ADV. SRI.M.S.NARAYANAN
R1 BY ADV. SRI.P.T.GIRIJAN
R1 BY ADV. SMT.USHA NARAYANAN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ORDERS 19.12.2014 THE
COURT ON 22-01-2015 DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & P.B.SURESH KUMAR, JJ.

F.A.O.No.209 of 2012

Dated 22nd January, 2015.

J U D G M E N T

P.B.Suresh Kumar, J.

The common order passed by the Court of the Subordinate Judge, Manjeri on two Interlocutory Applications for temporary injunction filed in O.S.No.292 of 2011 is under challenge in this appeal. The second defendant in the suit is the appellant. The respondents are the plaintiff and the first defendant respectively.

2. The plaintiff is running a petroleum outlet. She has instituted the suit for a declaration that the registered sale deed executed by her in favour of the second defendant in respect of the plaint schedule property is vitiated by fraud and collusion and for a decree setting aside the said sale deed on that ground. A decree for permanent prohibitory injunction restraining the second defendant from interfering with the possession of the plaintiff over the plaint schedule property and other ancillary reliefs are also sought in the suit. The case of the plaintiff is that she is in possession of the plaint schedule property by virtue of Ext.A1 assignment deed and is residing in

the residential building therein. According to her, at the instance of the first defendant who is none other than her son, she borrowed a sum of Rs.12 lakhs from the second defendant and while borrowing the said amount, she had executed the sale deed sought to be set aside on the impression that the same was a mortgage deed and it is only when the second defendant required the plaintiff to vacate the property, she came to know that the document executed by her was a sale deed. It is alleged by the plaintiff in the plaint that the sale deed executed by her in favour of the second defendant was obtained by the first defendant in the name of the second defendant who is his friend by playing fraud on her. It is also alleged by the plaintiff in the plaint that she is not a person who is capable of understanding the nature of the documents.

3. The first defendant remained ex-parte. The second defendant filed a written statement contending inter alia that the plaint schedule property was obtained by him by virtue of Ext B1 sale deed for a consideration of Rs.11,42,800/-; that pursuant to the purchase, mutation has been effected in respect of the property in the name of the second defendant and that he is in absolute possession and enjoyment of the

property. It is stated by the second defendant in the written statement that neither the plaintiff nor the first defendant had ever approached him for any loan and that he has not given any loan to them at any point of time. According to the second defendant, he was admitted in Kondotty Relief Hospital on 3/9/2011 for a surgery and was discharged from the hospital only on 17/9/2011 and in the meanwhile, on 16/9/2011, the plaintiff trespassed upon the plaint schedule property and thereafter filed the suit, stating falsely that she is in possession of the property.

4. Along with the plaint, the plaintiff filed I.A.No.1961 of 2011 seeking an order of temporary injunction restraining the defendants from trespassing into the plaint schedule property or interfering with her possession over the property or creating any document in respect of the same. The second defendant also filed an application in the suit as I.A.No.1967 of 2011 seeking an order of temporary injunction restraining the plaintiff from interfering with his possession over the plaint schedule property. The above applications were considered and disposed of by the court below as per the common order impugned in this appeal, holding that the

plaintiff has made out a prima facie case for injunction. Accordingly, I.A.No.1961 of 2011 was allowed and I.A.No.1967 of 2011 was dismissed. Hence this appeal by the second defendant.

5. Heard Sri.Joby Jacob Pulickekudy, the learned counsel appearing for the appellant/second defendant and Sri.M.S.Narayanan, the learned counsel appearing for the first respondent/ plaintiff.

6. The learned counsel for the second defendant contended that the materials on record, especially the registered sale deed executed by the plaintiff in favour of the second defendant is sufficient for the court to hold a prima facie case of possession in favour of the second defendant and the impugned order has been passed without adverting to the documents produced by the second defendant. The learned counsel has also brought to our notice the possession certificate issued in his name in respect of the property as also the ownership certificate issued in his name in respect of the building in the property by the local authority to buttress his contention that the second defendant has made out a prima facie case of possession to obtain the order of temporary

injunction sought for by him.

7. Per Contra, the learned counsel for the plaintiff contended that the report submitted by the Advocate Commissioner appointed in the suit would indicate that as on 16/9/2011, the plaintiff was in possession of the property and therefore, the court below was justified in holding that the plaintiff has made out a prima facie case of possession to obtain the order of injunction sought for by her. The learned counsel has also raised an objection as to the maintainability of the appeal.

8. The contention raised by the plaintiff as to the maintainability of the appeal is that since two interlocutory applications were disposed of by a common order, two appeals should have been filed by the second defendant and since only one appeal is filed, it has to be presumed that only one order is challenged. According to the learned counsel, since common findings are rendered as to the question of possession, the order which has not been challenged would operate as *res judicata* and therefore, the correctness of the question of possession rendered by the court below cannot be examined by this Court. We do not find any merit in this contention.

Though the second defendant had preferred only one appeal, he has challenged orders passed on both the interlocutory applications in the appeal. In the absence of an enabling provision to challenge the orders passed on two interlocutory applications in one appeal, the second defendant could have filed two appeals, but that does not mean that the composite appeal filed by him is liable to be dismissed as not maintainable, for, this is only a matter of form and not a matter of substance. Further, orders in the nature of temporary injunction are intended only to preserve the status quo pending the litigation and the same do not, in that sense, decide in any manner the merits of the controversy in issue in the suit. Such orders are certainly capable of being altered or varied on subsequent applications for the same relief, though normally the court would entertain such applications only on proof of new facts or new situations. As orders of injunction do not decide the legal rights of parties to the litigation, the principle of *res judicata* does not apply to the findings on which these orders are based, though if further applications are made for the same relief, the court may not entertain the same.

9. It is trite that prima facie case, balance of

convenience and irreparable injury are the criteria for the grant of temporary injunction. The plaintiff has not disputed the execution of Ext.B1 sale deed. She has also not disputed the receipt of consideration by way of a cheque from the second defendant, though her case is that she has received a sum of Rs.12,00,000/- as against the sum of Rs.11,45,000/- claimed to have been paid by the second defendant. Ext.B1 recites that the possession of the plaint schedule property has been handed over by the plaintiff to the second defendant by virtue of the said document. Ext.B2 is the possession certificate in respect of the property in favour of the second defendant. Ext.B3 is the tax receipt in respect of the property which indicates that mutation has been effected in respect of the property in the name of the second defendant. Ext.B4 is the ownership certificate issued in respect of the building in the property in the name of the second defendant by the Kondotty Grama Panchayat. The aforesaid documents would prima facie indicate that the second defendant has purchased the plaint schedule property and that he has been in possession of the property ever since its purchase. The documents produced by the plaintiff to establish her possession over the plaint schedule

property are a few electricity bills, telephone bills and a few communications of the Life Insurance Corporation issued in her name in the residential address in the plaint schedule property. In so far as the plaintiff was residing in the residential building in the plaint schedule property all throughout, the said documents are not sufficient to outweigh the presumption of genuineness attached to the registered sale deed, the possession certificate and the ownership certificate issued by the authorities concerned in the course of their official acts. The case set up in the plaint is that the plaintiff is not a person who is capable of understanding the contents of Ext.B1 document and that she has executed Ext.B1 under the impression that the same was a mortgage deed. It is beyond dispute that the plaintiff is a person who is running a petroleum outlet. As such, in the context of examining the prima facie case, it is hard to believe that the plaintiff has executed Ext.B1 without understanding the contents of the same. The contention of the plaintiff that she has executed Ext.B1 sale deed under the impression that the same was a mortgage deed cannot also be accepted. Sections 34 and 35 of the Registration Act mandates that no document shall be

registered under the Act unless the registering officer is satisfied on examination of the executant that the document has been executed by the person by whom it purports to have been executed. As such, once a document is registered, the presumption is that the registering officer was satisfied on enquiry that the document concerned was executed by the person by whom it purports to have been executed. True, it is only a presumption attached to the official act which could be rebutted. But, there is enough authority to show that the factum of registration shall be given due weight in the matter of deciding the issues relating to the execution of documents. Needless to say that in view of the provisions contained in Sections 34 and 35 of the Registration Act, the contention of the plaintiff that she has executed Ext.B1 document under the impression that the same was only a mortgage deed, cannot be accepted.

10. A perusal of the impugned order indicates that the court below has brushed aside the documents produced by the second defendant solely based on the report of the Advocate Commissioner. The Advocate Commissioner has only reported that when she inspected the property on 16/9/2011,

she found the plaintiff occupying the plaintiff schedule property. Ext.B7 is the discharge summary issued from Relief Hospital, Kondotty to the second defendant which indicates that the second defendant was admitted for treatment in the hospital on 3/9/2011 and he was discharged only on 17/9/2011. It is thus evident that the Commissioner has inspected the property when the second defendant was in the hospital. The Commissioner has reported that a jeep was found parked in the plaintiff schedule property when she visited the property. In the written statement filed by the second defendant, it is categorically stated by him that the said jeep is owned by the brother of his father and that the plaintiff or her children had never owned any jeep. This averment in the written statement has not been refuted by the plaintiff. In the aforesaid circumstances, we have no hesitation to hold that the plaintiff has not made out a case for an order of temporary injunction at all and that the materials on record are sufficient to hold a prima facie case for injunction in favour of the second defendant.

In the result, the appeal is allowed, the impugned common order is set aside, I.A.No.1961 of 2011 is dismissed

and I.A.No.1967 of 2011 is allowed and the plaintiff is restrained from interfering with the possession of the second defendant over the plaint schedule property till the disposal of the suit. In the peculiar facts of this case, we also deem it appropriate to direct the court below to dispose of the suit as expeditiously as possible, at any rate, within a period of six months from today.

Sd/-

P.N.RAVINDRAN, JUDGE.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)