

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

FAO.No. 21 of 2015 ()

(I.A.NO.438 OF 2015 O.S.NO.32 OF 2015 OF III ADDL.SUB COURT, ERNAKULAM)

PETITIONER/PETITIONER IN I.A./PLAINTIFF:

MANJU SHINE,
AGED 36 YEARS
D/O.LATE M.X. MATHEW AND LATE BABY MATHEW @ ROSILY
W/O.SHINE VARGHESE
PRESENTLY RESIDING AT CHITTEZHATHU HOUSE
MULAMTHURUTHY VILLAGE, PULIKKAMLI P.O., KARIKODE DESOM
KANAYANNUR TALUK, ERNAKULAM DISTRICT, PIN 682314

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

RESPONDENTS/RESPONDENTS IN I.A./DEFENDANTS:

1. SHEEJA @ SHEEJAMOL
AGED 41 YEARS
D/O.LATE M.X. MATHEW AND LATE BABY MATHEW @ ROSILY
WIFE OF BENOI GEORGE
PRESENTLY RESIDING AT CHERUKARA HOUSE
ERLOOR WEST P.O., THRIPIUNITHURA, PIN-682306
ERNAKULAM DISTRICT
2. SINDHU ABHILASH,
AGED 38 YEARS
D/O.LATE M.X.MATHEW AND LATE BABY MATHEW @ ROSILY
WIFE OF ABHILASH BABU
PRESENTLY RESIDING AT MAPPICHERY HOUSE
ERLOOR WEST P.O., PIN-682306, THRIPIUNITHURA
ERNAKULAM DISTRICT
3. LINJU MATHEW
AGED 33 YEARS
D/O.LATE M.X.MATHEW AND LATE BABY MATHEW @ ROSILY
WIFE OF CHARLES GEORGE
PERMANENT RESIDENT OF ELANJICKAL HOUSE
KALLINGAL PADAM, VANIYAMPARA VILLAGE & P.O.,
ALATHUR TALUK, PALAKKAD DISTRICT, PIN-678 541

4. LIBI MATHEW

AGED 28 YEARS

D/O.LATE M.X.MATHEW AND LATE BABY MATHEW @ ROSILY

WIFE OF PRAKASH MATHEW

PERMANENT RESIDENT OF VALLIPLACKAL HOUSE

ANAVILASAM VILLAGE, ANAVILASOM P.O.

KUMALY TALUK, IDUKKI DISTRICT PIN 685 535

R1&2 BY ADV. SRI.T.B.THANKAPPAN

R1&2 BY ADV. SRI.T.THARIKUMAR

R1&2 BY ADV. SRI.ASHISH VIDYADHARAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

F.A.O. No.21 of 2015

Dated this the 5th day of February, 2015

J U D G M E N T

P.N.Ravindran, J.

The petitioner is the plaintiff in O.S.No.32 of 2015 on the file of the Court of the Subordinate Judge of Ernakulam. The respondents are the defendants therein. The suit instituted by the appellant is one for partition of the plaint B schedule property and plaint C schedule movables into five equal shares and allotment of one such share to her. The petitioner has also prayed for a decree directing the first defendant not to renew the FL III licences that stood in the name of Mrs.Baby Mathew @ Rosily issued to Thripunithura Tourist Home and Kottavathil Restaurant, Thripunithura without her written consent. The petitioner has also prayed for a decree directing defendants 2 and 3 to pay future mense profits from plaint B schedule property at the rate of Rs.4,00,000/- per annum with effect from 5.1.2015.

2. The plaint proceeds on the averment that plaint schedule properties belonged to late Baby Mathew @ Rosily, who is none other than the mother of the plaintiff and the defendants and on her death it devolved on them. Along with the plaint the petitioner filed I.A.No.438 of 2015 for an interim order of injunction restraining the defendants from alienating, encumbering or creating any third party rights in the petition A schedule property, which is same as the plaint

B schedule property, and from transferring the two FL III licences to the name of the first respondent or anyone else pending disposal of the suit. In the interlocutory application, which was presented on 27.1.2015, the trial court passed an ad interim order of injunction on 29.1.2015 whereby the trial court restrained the defendants from alienating, encumbering or creating any third party rights in the plaint B schedule property. An ad interim order restraining the respondents from transferring the two FL III licences was not granted. The application now stands posted to 16.2.2015. The appellant has filed this appeal seeking an interim order of injunction restraining the respondents from transferring the FL III licences referred to in the plaint. The appellant is also aggrieved by the failure of the court below to communicate the fact that an order of injunction has been passed by it to the Sub Registrars Offices at Thripunithura, Maradu, Mulamthuruthy and Kuthiyathodu.

3. We heard Sri.M.S.Narayanan, learned counsel appearing for the petitioner and Sri.T.B.Thankappan, learned counsel appearing for respondents 1 and 2. Respondents 3 and 4 have not been served notwithstanding the fact that notice was attempted to be served by special messenger, for the reason that they are at present not in India. The plaint proceeds on the assumption that Smt.Baby Mathew @ Rosily died intestate. It is on this basis that the appellant has prayed for an interim order of injunction in relation to the renewal of the FL III

licences referred to above. Respondents 1 and 2 have filed a counter affidavit dated 3.2.2015 in answer to the averments in I.A.No.133 of 2015 filed in this appeal and produced along with it a copy of the registered Will dated 12.3.2013 stated to have been executed by late Baby Mathew @ Rosily. It is contended that as per the said Will, the right to exploit the FL III licences has been bequeathed to the first respondent. The first respondent has also contended that a few days prior to the execution of the Will, as per a settlement deed registered as document No.519 of 2013 of SRO, Mulamthuruthy 26.67 ares of land with the building therein was settled on the plaintiff. The first defendant has also averred that the late testator was exploiting the bar licences till 31.3.2014, that thereafter in accordance with the policy of the Government the testator had submitted an application to get FL-11 licences issued in respect of the two hotels on 31.12.2014 along with necessary documents and the prescribed fee, that it was thereafter that the testator passed away on 4.1.2015 and that upon the testator's death, the first respondent has submitted an application for the issuance of the FL-11 licences in her name, treating the application filed by the testator as her application. The deponent has also averred that the appellant and the first respondent were heard by the Excise Officials and on coming to know about the Will in the course of such proceedings, the suit has been filed on the averment that the mother died intestate. The deponent has stated that in view of the

Will executed by her mother, she alone is entitled to get the FL-11 licences issued.

4. The plaint proceeds on the basis that the mother of the plaintiff and defendants died intestate. The case put forward by the first respondent is that late Baby Mathew @ Rosily had executed a will on 12.3.2013 inter alia bequeathing the right right to exploit the FL III licences to her. It is not in dispute that on the strength of the aforesaid Will, the first respondent has taken steps to have FL-11 licences issued in her name. The question whether the Will is genuine or not has not so far been examined by the court below. The court below has also not disposed of I.A.No.438 of 2015 finally. The respondents are yet to file their objections to it. In such circumstances, we are of the considered opinion that it will not be proper for us to go into the rival contentions at this stage and enter a finding as regards the rights of parties in the matter of applying for and obtaining the FL-11 licences. We therefore find no reason to interfere with the impugned order. The proper course in our opinion would be to direct the court below to dispose of I.A.No.438 of 2015 expeditiously and in any event within one month from 16.2.2015, the date fixed for return of notice.

In such circumstances we dispose of the appeal with a direction to the Court of the Subordinate Judge of Ernakulam where O.S.No.32 of 2015 is pending, to hear and dispose of I.A.No.438 of 2015

expeditiously and in any event within one month from 16.2.2015. The interim order earlier passed by us on 30.1.2015 in I.A.No.133 of 2015 in this appeal shall stand vacated. But we clarify that it will be open to the petitioner/appellant to move the court below for appropriate further orders on I.A.No.438 of 2015 or for such other interim reliefs. We also deem it appropriate to direct the court below to communicate the order passed by it on 29.1.2015 to the Sub Registrars Offices at Thripunithura, Maradu, Mulamthuruthy and Kuthiyathodu as directed by this Court in **Mary v. Issac** [2014 (1) KLT 923] and the recent order passed by a Division Bench of this Court on 22.1.2015 on I.A.No.2734 of 2014 in R.F.A.No.626 of 2013.

Registry to communicate a copy of this judgment to the Excise Commissioner by fax at the petitioner's expense. Registry shall also communicate a copy of the interim order passed by this Court 22.1.2015 on I.A.No.2734 of 2014 in R.F.A.No.626 of 2013 to the court below for compliance.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**

vps

