

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

FAO.No. 68 of 2015 ()

I.A.NO.3555/2014 IN A.S.NO.158/2014 OF ADDL. SUB COURT, IRINJALAKUDA.

APPELLANT(S)/APPELLANT/PLAINTIFF:

BABY AGED 49 YEARS
S/O.KAPPIL OUSEPH, INCHAKUNDU DESOM, MUPLIYAM VILLAGE
CHALAKKUDY, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/RESPONDENT/DEFENDANT:

JOSEPH, AGED 69 YEARS
S/O.KAPPIL OUSEPH, INCHAKUNDU DESOM, MUPLIYAM VILLAGE
CHALAKKUDY, THRISSUR DISTRICT -680 001.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

F.A.O. No.68 of 2015

Dated 27th March, 2015.

J U D G M E N T

The order on I.A.No.3555 of 2014 in A.S.No.158 of 2014 on the file of the Additional Sub Court, Irinjalakkuda is under challenge in this appeal.

2. A.S.No.158 of 2014 is an appeal filed by the plaintiff in O.S.No.701 of 2013 on the file of the Munsiff Court, Irinjalakkuda challenging the dismissal of the said suit. In the appeal, the appellant filed I.A.No.3555 of 2014 seeking an order of temporary injunction restraining the defendant from trespassing into the plaint schedule property. The application for temporary injunction was opposed by the respondent, contending among others, that the plaintiff has not established the ownership of the plaint schedule property as claimed by him in the suit and that the respondent has been taking water from the pond in the plaint schedule property for irrigation for years. The appellate court, on an appraisal of the materials on record, though passed an order of injunction restraining the

respondent from committing waste in the property, permitted the respondent to take water from the quarry pond inside the plaint schedule property during summer season. The plaintiff is aggrieved by the decision of the appellate court in permitting the respondent to take water from the quarry pond. Hence this appeal.

3. Heard the learned counsel for the appellant.

4. Since the plaintiff could not establish his case to succeed in the suit, the appellate court cannot be found fault with for having passed an order in the nature of one impugned in this appeal. There is, therefore, no merit in the appeal. However, in the peculiar facts of this case, I deem it appropriate to direct the appellate court to dispose of A.S.No.158 of 2014 as expeditiously as possible, at any rate, before 30.6.2015.

The appeal is disposed of as above.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)