

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

FAO.No. 69 of 2015 ()

AGAINST the ORDER IN I.A.288/2014 IN O.S.302/2013 OF THE SUB COURT,
CHAVAKKAD DATED 23.08.2014

APPELLANT/2ND RESPONDENT:

A.V ANTO
S/O.PUDUSSERY ALUKKA VARGHESE
CHELAKKOTTUKARA VILLAGE AND DESOM, THRISSUR TALUK

BY ADV. SRI.T.N.MANOJ

RESPONDENTS/PETITIONER AND IST RESPONDENT:

1. ANIL
S/O.ALAPPUZHA SEKHARAN, NATTIKA VILLAGE, AND DESOM
CHAVAKKAD TALUK-680506

2. DR SUBRAMANIAN
S/O.ALAPPUZHA RAMAN, NATTIKA VILLAGE, AND DESOM
CHAVAKKAD TALUK
THROUGH HIS POWER OF ATTORNEY VENUGOPALAN
S/O.KUNUPARAMBIL VEETIL GANGADHARAN
VALAPPAD VILLAGE, EDAMUTTAM DESOM
CHAVAKKAD TALUK-680506

R1 BY ADV. SRI.RAJIT
R2 BY ADV. SRI.ROY MATHEW

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.69 of 2015

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Dated this the 30th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order of temporary injunction issued in a suit for specific performance of an alleged contract for sale.

2. Heard the learned counsel for the appellant and the learned counsel for the first respondent/plaintiff.

3. Appellant is the second defendant in the suit for specific performance, in which he was not initially arrayed as a party. It appears that the plaintiff sued the sole defendant who is presently the first defendant on the strength of a contract for sale. Plaintiff also unsuccessfully attempted to get an order of attachment before judgment in relation to the property allegedly covered by the agreement sought to be enforced. That led to O.P (C).No.752 of 2011 under Article 227 of the Constitution of India before this Court. That original petition is shown to have been ordered directing the original defendant to deposit certain amounts before the court below in lieu of attachment. That defendant did so. In the meanwhile, during the pendency of the

suit, that is to say, normally eight months after the agreement in favour of the plaintiff, first defendant sold the property to the appellant. Thereupon, appellant was impleaded as additional second defendant in the suit and the impugned order of temporary injunction was issued against him as well.

4. While the learned counsel for the appellant argued that his client is a bona fide transferee and the doctrine of lis pendens cannot bring home to the plaintiff any right to sustain an order of temporary injunction in the nature in which it has been granted, the mere availability of a charge for a vendee to the extent of the advance in terms of the provisions of the Transfer of Property Act, 1882, is no answer to counter the eligibility to seek specific performance in cases where such relief can be granted in terms of the Specific Relief Act, 1963. We are also of the view that in the case in hand, it is too early to finally decide as to whether the second defendant is a bona fide transferee for valuable consideration and whether that defendant is entitled to any protection on equitable considerations. The nature of injunction issued by the court below is only against inducting strangers or transferring the property to anybody other than the plaintiff and also from committing any act of waste. We also see that the said order of temporary injunction is a relief that was available to the

plaintiff, on the facts of the case in hand. Plaintiff had a prima facie case and balance of convenience was in the grant of temporary injunction as has been granted by the court of first instance. Irreparable injury would have been caused to the plaintiff if such injunction was not granted by the court below, though the third parties who are brought in by impleading those strangers have the eligibility to contest the suit. We, therefore, do not find any ground to interfere with the impugned order.

5. Having regard to the peculiar nature of the litigation, we request the court below to expeditiously consider final disposal of the suit so that the suit will terminate without delay, if possible before the end of 2015. If any request is made by the appellant/second defendant for any clarificatory orders as regards any construction activities/improvements, it is for the court below to consider any such request in accordance with law.

In the result, this appeal is dismissed subject to what is stated in paragraph no.5 above.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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