

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

FAO.No. 97 of 2015

**ORDER DTD.11.3.2015 IN IA.2009/2014 IN AS.109/2012 OF SUBORDINATE COURT,
TIRUR**
.....

APPELLANT(S)/PETITIONER:

1. SAIFUDHEEN, AGED 46 YEARS,
S/O.ANDATHODE HUSSANKUTTY, PONNANI TALUK,
AYIROOR AMSOM, PUTHIYIRITHI DESOM, P.O.PALAPPETTY.
2. AFSATH, AGED 45 YEARS,
D/O.ANDATHODE HUSSANKUTTY, PONNANI TALUK,
AYIROOR AMSOM, PUTHIYIRITHI DESOM, P.O.PALAPPETTY.
3. KUNHIMOL, AGED 70 YEARS,
W/O.ANDATHODE HUSSANKUTTY, PONNANI TALUK,
AYIROOR AMSOM, PUTHIYIRITHI DESOM, P.O.PALAPPETTY.

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.VINOD RAVINDRANATH
SRI.SAJU.S.A
SMT.MEENA.A.
SRI.K.C.KIRAN

RESPONDENT(S)/RESPONDENT:

1. KUNHI MUHAMMEDKUTTY, AGED 54 YEARS,
S/O.PARAMBATHEIR AHAMMED, PONNANI TALUK, AYIROOR AMSOM,
PUTHIYIRITHI DESOM, P.O.PALAPPETTY, PIN - 679 579.
2. SHARAFUDHEEN, AGED 45 YEARS,
S/O.PARAMBATHEIR AHAMMED, PONNANI TALUK, AYIROOR AMSOM,
PUTHIYIRITHI DESOM, P.O.PALAPPETTY, PIN - 679 579.
3. SHAJI,
S/O.PARAMBATHEIR AHAMMED, PONNANI TALUK, AYIROOR AMSOM,
PUTHIYIRITHI DESOM, P.O.PALAPPETTY, PIN - 679 579.

R2-R3 BY ADV. SRI.JAMSHEED HAFIZ

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

F.A.O.No.97 of 2015

Dated this the 25th day of May, 2015

JUDGMENT

The order on I.A No.2009/2014 in A.S NO.109/2012 on the file of the Sub Court, Tirur is under challenge in this appeal.

2. The appellants filed O.S No.357 of 2000 before the Munsiff Court, Ponnani for recovery of possession of the plaint schedule property therein on the strength of title. The trial court dismissed the suit. The Appellants challenged the decision of the trial court in A.S No.109/2012. In the appeal, they filed I.A No.2009/2014, seeking an order of temporary injunction restraining the defendants from cutting and removing the trees in the property and from constructing any building therein and also from alienating the property, till the disposal of the appeal.

3. The application for injunction was opposed by the defendants. The Appellate Court, on appraisal of the materials on record, dismissed the application, holding that the appellants have not made out a prima facie case for injunction. As noticed above, the above order of the appellate court is under challenge in this appeal.

4. The appeal referred to above is one instituted in the year 2012. The application for temporary injunction is seen filed in the appeal during 2014. There is nothing on record to indicate that the appellants have been granted an ad interim order of injunction. In other words, all throughout, there was no injunction. In the said circumstances, I deem it appropriate to direct the court below to dispose of the appeal on merits. In so far as the matter is pending consideration before the appellate court, it is only just and proper to injunct the respondents from committing waste in the property.

In the result, the appeal is disposed of directing

the Sub court, Tirur to dispose of A.S No.109/2012 on merits, as expeditiously as possible, at any rate, within four months from today. The respondents are directed by an order of temporary injunction from committing any waste in the property pending disposal of the appeal.

Sd/-

P.B.SURESH KUMAR, JUDGE.

smm

(true copy)

P.A. to Judge.