

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

FAO.No. 225 of 2015

**I.A.NO.209/2014 IN A.S.NO.21/2014 IN O.S.NO.949/1998 OF THE PRINCIPAL
MUNSIFF'S COURT, NEYYATTINKARA**

APPELLANT(S)/PETITIONER :

**VILASINI, D/O.AMMALU, AGED 60 YEARS,
MAVUNINNA KULANGARA VEEDU, THIRUPURAM DESOM,
THIRUPURAM VILLAGE.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S)/COUNTER PETITIONERS 13, 24, 25, 26 AND 27 :

- 1. PANKAJASKSHY,
AGED 79 YEARS, D/O.KARTHIAYANI, MUDANTHANNI VEEDU,
THIRUPURAM VILLAGE, NEYYATTINKARA,
THIRUVANANTHAPURAM- 695 133.**
- 2. SUDHEER,
AGED 36 YEARS, S/O.APPUKUTTAN NADAR, MUDANTHANNI VEEDU,
THIRUPURATHOOR DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT - 695 133.**
- 3. SASI,
AGED 46 YEARS, S/O.RAMAKRISHNAN NADAR,
VARUVILAKATHU PUTHEN VEEDU, MURIYANKARA DESOM,
PARASSALA VILLAGE,
THIRUVANANTHAPURAM DISTRICT - 695 502.**
- 4. CHITHRA,
AGED 39 YEARS, D/O.PANKAJAKSHY, MUDANTHANNI VEEDU,
THIRUPURAM DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM -695 133.**
- 5. SHEELA,
AGED 47 YEARS, D/O.PANKAJAKSHY, MUDANTHANNI VEEDU,
THIRUPURAM DESOM, THIRUPURAM VILLAGE,
THIRUVANANTHAPURAM -695 133.**

**BY ADVS. SRI.R.T.PRADEEP
SMT.M.BINDUDAS**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 11-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

F.A.O. No.225 of 2015

Dated 11th December, 2015.

J U D G M E N T

This appeal is preferred challenging the order on I.A.No.209 of 2014 in A.S.No.21 of 2014 on the file of the Sub Court, Neyyattinkara.

2. A.S.No.21 of 2014 is an appeal preferred challenging the decision in O.S.No.949 of 2008 on the file of the Munsiff Court, Neyyattinkara. O.S.No.949 of 2008 is a suit for partition. The appellant is the third defendant in the said suit. The suit was dismissed by the trial court and the appeal referred to above was filed by the appellant challenging the decision of the trial court. Pending appeal, the appellant filed I.A.No.209 of 2014 seeking an order of temporary injunction restraining the respondents and others from committing waste in the suit property or making new constructions over the same. On an elaborate consideration of the merits of the contentions, the said application was dismissed by the appellate court. The appellant impugns the said order in this appeal.

3. When the second appeal came up for admission, this Court passed an order of temporary injunction restraining the respondents from committing waste and also from making constructions in the suit property.

4. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

5. The learned counsel for the respondents pointed out that respondents 3 and 4 have constructed a residential building in the suit property and in the light of the interim order passed by this Court, the appellant is causing obstructions to the house warming ceremony of the said building.

6. The impugned order indicates that the appellate court declined the order of temporary injunction sought by the appellant on a consideration of the merits of the rival contentions. The learned counsel for the respondents attempted to support the impugned order on merits. According to me, consideration of the merits of the case by this Court at this point of time would certainly prejudice the parties in the matter of urging their respective contentions at the time of

hearing of the appeal. At the same time, the suit property has to be preserved till the final adjudication of the disputes by the appellate court. In the circumstances, having regard to the submissions made by the learned counsel for the respondents, I deem it appropriate to direct the appellate court to dispose of the appeal on merits and also to direct the parties to maintain status quo in relation to the suit property till the final disposal of the appeal.

In the result, the appeal is disposed of directing the Sub Court, Neyyattinkara to dispose of A.S.No.21 of 2014 on merits, untrammelled by the findings and observations made in the impugned order, on or before 31.1.2016, if the appeal is ripe for hearing. Till the final disposal of the appeal, the parties shall maintain status quo in relation to the suit property. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

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