

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

FAO.No. 243 of 2014 ()

(AGAINST THE ORDER IN I.A.NO.371/2014 IN O.S.NO.57/2013 OF SUB COURT,
HOSDURG DATED 23/05/2014)

APPELLANT/PETITIONER/2ND DEFENDANT:

KAMMADATH PUZHAKKRA MOIDEENKUNHI, AGED 67 YEARS,
S/O. ABDULLA, RESIDING AT HOUSE NO. XII-53,
CHERUVATHUR GRAMA PANCHAYATH, TAQVA NAGAR,
P.O. KAITHAKKAD, CHERUVATHUR VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.

BY ADVS.SRI.T.K.VIPINDAS
SRI.K.V.SREE VINAYAKAN
SRI.K.M.MUHAMMED HUSSAIN

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS:

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1. LAINAKILLATH MUHAMMED KUNHI,
S/O. CHEETTAYIL AHAMMED,
RESIDING AT KAMMADAM MOOLAPPARA IN PARAPPA VILLAGE,
P.O. PARAPPA. PIN-671 533.
 2. LAINAKILLATH ADDUMAYI,
S/O. CHEETTAYIL AHAMMED,
RESIDING AT KAMMADAM MOOLAPPARA IN PARAPPA VILLAGE,
P.O. PARAPPA. PIN-671 533.
 3. LAINAKILLATH ABOOBACKER,S/O. CHEETTAYIL AHAMMED,
RESIDING AT KAMMADAM MOOLAPPARA IN PARAPPA VILLAGE,
P.O. PARAPPA. PIN-671 533.
 4. MOOLAKKAL SAMAD, S/O.CHETTAYIL AHAMMED,
RESIDING AT KAMMADAM MOOLAPPARA IN PARAPPA VILLAGE,
P.O.PARAPPA,PIN-671 533

R1 TO R4 BY ADV. SRI.JAWAHAR JOSE

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 10-04-2015, ALONG WITH FAO.NO. 244/2014, THE COURT ON
20-05-2015 DELIVERED THE FOLLOWING:

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

F.A.O.Nos.243 and 244 of 2014

Dated this the 20th day of May, 2015

JUDGMENT

Anil K.Narendran, J.

F.A.O.No.243 of 2014 arises out of the order passed by the Court of the Subordinate Judge of Hosdurg on 23.5.2014 in I.A.No.371 of 2014 in O.S.No.57 of 2013. Similarly F.A.O.No.244 of 2014 arises out of the order passed on 23.5.2014 in I.A.No.374 of 2014 in O.S.No.57 of 2013.

2. O.S.No.57 of 2013 is a suit filed by the respondents herein, who are plaintiffs 1, 3, 5 and 9 therein, along with 8 others for a declaration that the plaint schedule property belongs to them absolutely on the strength of their title and that it is in their possession and enjoyment and that document Nos.741 of 2009 and 742 of 2009, both of S.R.O. Balal, are not valid and binding on the plaintiffs or the plaint schedule property. They have also sought a permanent prohibitory injunction restraining the defendants or their men from trespassing into the plaint schedule property or in any

way interfering with their peaceful possession and enjoyment thereof.

3. The appellant in F.A.O.No.243 of 2014 is the second defendant in O.S.No.57 of 2013 and the appellant in F.A.O.No.244 of 2014 is the third defendant therein. Defendants 1, 4 and 5 in that suit are Kunjahammad, Thekke Mavunga Mannil Muhammadali and Pattillath Ismail, respectively. On receipt of summons, defendants 1 to 3 filed separate written statements and defendants 4 and 5 filed a joint written statement.

4. During the pendency of the suit, the appellant in F.A.O.No.243 of 2014, who is the second defendant in the suit, filed I.A.No.371 of 2014, an application under order XXXIX rule 1 of the Code of Civil Procedure, 1908, seeking an order of temporary injunction restraining the respondents herein, who are plaintiffs 1, 3, 5 and 9, or their men from trespassing into the petition schedule property or from committing acts of waste and damage therein or from preventing the appellant or his men from collecting usufructs therefrom or from preventing the appellant or his men from raising seasonal crops therein. The appellant in F.A.O.No.244 of 2014, who

is the third defendant in the suit, filed I.A.No.374 of 2014, seeking an order of temporary injunction restraining the respondents herein or their men from trespassing into the petition schedule property or from committing acts of waste and damage therein or from preventing the appellant or her men from collecting the usufructus therefrom or from preventing her or from her men from raising seasonal crops therein.

5. The respondents herein filed counter statements opposing the reliefs sought in I.A.Nos.371 of 2014 and 374 of 2014. On the side of the appellants Exts.A1 to A7 were marked and Exts.B1 and B2 were marked on the side of the respondents. The order of the Land Tribunal, Kanjagad, in S.M.P.No.969 of 1975 was marked as Ext.X1.

6. On an appreciation of the facts and circumstances of the case and also the documents on record, the court below came to the conclusion that the documents relied on by the appellants (defendants 2 and 3) are not sufficient to establish their exclusive possession and enjoyment of the petition schedule property and that they have not succeeded in establishing a prima facie case for the

grant of a temporary injunction as prayed for. In the result, the court below dismissed both the applications. Aggrieved by the order passed by the court below on 23.5.2014, the appellants are before us in these appeals.

7. We heard the arguments of the learned counsel for the appellant in both the appeals and also the learned counsel appearing for respondents 1 to 4. We have considered the rival submissions made at the Bar.

8. The suit for declaration with a consequential prayer for a permanent prohibitory injunction was filed on an allegation that the plaint schedule property property having an extent of 5 acres comprised in R.S.No.573/2 along with another extent of 63 cents in R.S.No.573/1 originally belong in jenm right to late Abdulla, the father of the second defendant. It was averred that both the above items of properties were in the possession of Pazhayapattillath Kunjahammed, father of plaintiffs 1 to 9, 11 and 12 and the husband of plaintiff No.10, on tenancy right and while the said Kunjahammad was in possession and enjoyment of the property as a cultivating tenant, the Land Tribunal, Kanjagad, initiated suo motu proceedings

as S.M.P.No.969 of 1975 for assignment of the jenm right in his favour, that during the course of the enquiry an extent of 63 cents was delineated from the suo motu proceedings as the jenmi was the Devaswom under the management of Padmanabha Thanthri and therefore an order assigning the jenm right in respect of the plaint schedule property having an extent of 5 acres comprised in R.S.No.573/2 was passed in favour of the said Kunjahammad. Pursuant to the said order, a purchase certificate was also issued in the name of the said Kunjahammad. Later, by order passed by the Devaswom Land Tribunal in O.A.No.20723 of 1976 the jenm right in respect of 63 cents of land delineated from the suo motu proceedings was also assigned in favour of the aforesaid Kunjahammad. The plaintiffs would contend that, since their predecessor-in-interest Kunjahammad was residing at a place known as Cheetayil, he was known as Cheetayil Kunjahammad. In some documents his name was shown as C.Kunjahammed and in some other documents as C.Ahammad. According to the plaintiffs, their predecessor-in-interest Kunjahammad died on 19.4.1998 and after his death the plaint schedule property is in the joint possession and

enjoyment of the plaintiffs.

9. Per contra defendants 2 and 3, who are the appellants in these appeals, would contend that the plaint schedule property originally belonged to one Kunjahammad, son of Kunjabdhulla, who is arrayed as the first defendant in the suit, on tenancy right under Kammadath Puzhakara Tharawad and later the Land Tribunal assigned the jenm right in his favour. In the year 2009, defendants 2 and 3 purchased the plaint schedule property from the first defendant for valid consideration vide Exts.A1 and A5 sale deeds. Defendants 2 and 3 would contend further that the predecessor-in-interest of the plaintiffs, namely, Cheetayil Kunjahammad is a different person and he has nothing to do with the plaint schedule property. In support of this contention they produced the death certificate of the predecessor-in-interest of the plaintiffs as Ext.A2. They also produced Ext.A3 series of basic tax receipts and Ext.A4 possession certificate in order to show that the petition schedule property in I.A.No.371 of 2014 stands in the name of the second defendant and that he is in actual physical possession thereof. Similarly Ext.A6 series of basic tax receipts and Ext.A7 possession

certificate were produced in order to show that the petition schedule property in I.A.No.374 of 2014 stands in the name of the third defendant and that she is in possession thereof.

10. As noticed by the court below, the fact that the plaint schedule property originally belonged to one Kunjahammad is not in dispute. The dispute is as regards the identity of Kunjahammad. The question whether he is the predecessor-in-interest of the plaintiffs as alleged in the plaint or the Kunjahammad who is arrayed as first defendant in the suit, from whom defendants 2 and 3 purchased the said property vide Exts.A1 and A5 sale deeds, can be finally decided only after an elaborate enquiry, which can be done only at the time of trial, and therefore, the only question that can be considered for the purpose of disposing I.A.Nos.371 of 2014 and 374 of 2014 for temporary injunction is whether defendants 2 and 3 have made out a prima facie case for the grant of an order of injunction as prayed for.

11. As we have already noticed, both sides have not chosen to adduce any oral evidence. It was based on the documents on record, the court below came to a prima facie conclusion that, the

tenant of both the items of property in respect of which Ext.X1 suo motu proceedings were initiated in S.M.P.No.969 of 1975 on the file of the Land Tribunal, Kanjagad is Kunjahammad, the predecessor-in-interest of the plaintiffs, who was described as Chitttayil Kunjahammad in Ext.B1 purchase certificate and as Chittayil Ahammed in Ext.B2 ration card and in Ext.A2 death certificate. As noticed by the court below Ext.X1 proceedings before the Land Tribunal was not one personally conducted by the tenant P.Kunjahammad. On the other hand, he authorised one N.P.Naryanan to conduct that proceedings on his behalf. Ext.X1 file contained the authorisation letter so given by P.Kunjahammad, which is seen signed by him, which makes it clear that the said P.Kunjahammad is a person having the capacity to write his name and affix his signature. Whereas, Ext.A1 and A5 sale deeds, by which the petition schedule properties were allegedly sold to defendants 2 and 3, do not contain his signature and the name of the transferrer in those documents is also apparently not written by him. The court below has also noticed that, the written statement filed by the first defendant did not contain his signature and he did

not write his name in it. It was in these circumstances, the court below came to the prima facie conclusion that, the first defendant Kunjahammad is not the same Kunjahammad in whose favour the Land Tribunal assigned the jenm of the plaint schedule property. The court below has also noticed that, the first defendant has not produced any tax receipts or purapadu receipts to show that he was in actual physical possession and enjoyment of the plaint schedule property till the year 2009, i.e., till he allegedly sold the said property to defendants 2 and 3. It was in such circumstances the court below came to the conclusion that the documents relied on by defendants 2 and 3 are not sufficient to establish their exclusive possession and enjoyment of the petition schedule property and that they have failed to establish a prima facie case for the grant of a temporary injunction as prayed for.

12. In **Wander Ltd. v. Antox India P.Ltd.** (1990 Supp SCC 727) the Apex Court dealt with the scope and ambit of an appeal against discretionary order of the trial Court in general and appeal from an order under section 104 of the Code of Civil Procedure, read with order XLIII Rule 1 of the code in particular. Paragraphs 9 and

14 of the judgment read thus;

“9. Usually the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

“....is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies.”

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a

defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case consideration somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

xxx xxx xxx

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not re-assess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been

exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* 1960 (3) SCR 713 at 721)

".....These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton'* (1942 AC 130)the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

13. Tested in the light of the principles referred to above, we find absolutely no illegality or irregularity in the order passed by the court below in declining to grant an order of temporary injunction as prayed for. The reasoning of the court below in the impugned order is neither perverse nor patently illegal, warranting interference by this Court in an appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure.

14. In the result, these appeals fail and they are dismissed.
No order as to costs.

15. It is made clear that the observations made by this Court in this judgment is for the limited purpose of disposing of these appeals and the court below shall proceed with the trial of the suit, untrammelled by any of the observations contained in this judgment.

It will be open to the appellants to move an application before the court below for early disposal of the suit.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRAN, JUDGE

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