

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

FAO.No. 352 of 2014 ()

AGAINST ORDER DATED 2.7.2014 IN IA 797/2014 IN OS 26/2014 OF SUB
COURT, OTTAPALAM.

APPELLANT/1ST RESPONDENT/1ST DEFENDANT:

SAJEEVAN AGED 56 YEARS
S/O.JOSEPH, VARIKKATT VEEDU, KARIKKODUKARA
THODUPUZHA VILLAGE, THODUPUZHA TALUK

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.SUNIL KUMAR A.G
SRI.DIPU JAMES

RESPONDENTS/PETITIONER & 2ND RESPONDENT/PLAINTIFF &2ND DEFENDANT:

1. USSANAR, AGED 54 YEARS
S/O.BHAVAN, ARANGADU VEEDU, KALLAUR
MANKARA, PALAKKAD 678 613

* 2. M.D.ABRAHAM, AGED 65 YEARS
S/O.DEVASYA , MUNDAKKAL, THACHAMPARA - REMOVED
MANNARKKAD TALUK, PALAKKAD 678 582

R2 IS REMOVED FROM THE ARRAY F PARTIES AT THE RISK OF THE APPELLANT
VIDE ORDER DATED 19.10.2015 IN IA 1208/2015

R1 BY ADV. SRI.K.P.BALAGOPAL
R1 BY ADV. SRI.K.N.CHATHUKUTTY

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

F.A.O.No.352 of 2014

Dated this the 27th day of November, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the first defendant in O.S.No.26 of 2014 on the file of the Sub Court, Ottappalam challenging the order dated 2.7.2014 in I.A.No.797 of 2014. By the said order the trial court has enjoined the appellant from cutting and removing trees in the plaint schedule property, till the disposal of the suit.

2. We heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent. The brief facts pleaded in O.S.No.26 of 2014, filed by the first respondent, for recovery of money, in which the appellant and another person are defendants 1 and 2, are that the appellant/first defendant is the owner of the property which is a rubber estate. On 21.9.2010 an agreement was entered into between the first defendant and the second defendant, whereby the second defendant was given the right to slaughter tap and to cut and remove the rubber trees in the plaint schedule property subject to the terms and conditions mentioned in the agreement.

3. Subsequently, on 20.1.2011, an agreement was executed

between the plaintiff and the 2nd defendant, whereby, the 2nd defendant assigned his rights under the agreement dated 21.9.2010 to the plaintiff. The terms and conditions of the assignment are also mentioned in the agreement. It is the case of the plaintiff that the first defendant prevented him from enjoying the benefits of agreement and that therefore he rescinded the agreement and filed O.S.No.26 of 2014 for recovery of money, impleading defendants 1 and 2. Along with the suit, he filed I.A.No.797 of 2014 seeking an order of injunction restraining the first defendant, owner of the property, from cutting and removing the rubber trees. It was this IA which was allowed by the trial court by order dated 2.7.2014, which is impugned in this appeal.

4. Having heard the submissions made by both side, what we find is that the facts pleaded by the plaintiff would show that the contract that the plaintiff has entered into is only with the 2nd defendant and that by the said contract the 2nd defendant has assigned his rights under the agreement dated 20.1.2011 with the first defendant. Therefore, if at all the plaintiff was unable to enjoy his rights under the agreement with the 2nd defendant, his claims can only be against the 2nd defendant and he cannot *prima facie* seek any relief against the 1st defendant. If that be so, for absence of preivity of

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contract between the plaintiff and the first defendant, the plaintiff could not have sought an order of injunction against the first defendant as sought in I.A.No.797 of 2014. In such a situation the court below could not have passed the order of injunction and for that reason we are inclined to set aside the order dated 2.7.2014 passed in I.A.No.797 of 2014 in O.S.No.26 of 2014 on the file of the Sub Court, Ottappalam.

Accordingly this appeal is allowed, the impugned order is set aside. Be that as it may, having regard to the nature of the controversy involved, we feel it is essential that an earlier disposal of the suit is necessary. Therefore, it is ordered that the court below shall expedite the disposal of the suit on production of a copy of this judgment.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc

true copy

PA to Judge