

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

FAO.No. 356 of 2014 ()

ORDER DATED 27.11.2014 ON I.A.NO.1909/2013 IN O.S.664/2008 OF ADDL.SUB
COURT, KOTTAYAM.

APPELLANT/COUNTER PETITIONER/DEFENDANT:-

REGHUNATHAPRASAD @ REGHU @ J AGANNATHAPRASAD,
AGED 57 YEARS S/O.LATE C.SAHADEVAN, C.S.SADANAM
NEAR K.S.R.T.C BUS STAND, T.B.ROAD, KODIMATHA KARA
KOTTAYAM-1.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE

RESPONDENTS/PETITIONERS/PLAINTIFFS:-

1. RAJENDRA PRASAD,, AGED 59 YEARS
S/O.LATE C.SAHADEVAN, 4-C, CENTUARY TOWERS
NEAR YMCA, KOTTAYAM - 1.
2. MADHUBLA GOPALAN, AGED 55 YEARS
W/O.GOPALAN, SRIKRISHNA NIKETHAN, NMC NO.K/501
RAILWAY STATION ROAD, NEYYATTINKARA
THIRUVANANTHAPURAM, PIN - 695 121.
3. SURABALAMURALI, AGED 53 YEARS
W/O.MURALI, VELLAPALLY BUNGLOW, PERINNIRAMANGALAM KARA
MARARIKULAM NORTH VILLAGE, KANICHUKULANGARA P.O.
CHERTHALA, ALAPPUZHA, PIN - 688 582.

R1-R3 BY ADV. SRI.DINESH R.SHENOY
R1-R3 BY ADV. SMT.K.K.JYOTHILAKSHMY
R1-R3 BY ADV. SRI.SANIL JOSE
R1-R3 BY ADV. SMT.S.SOUMYA ISSAC

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O.No.356 OF 2014

DATED THIS THE 6th DAY OF FEBRUARY, 2015

JUDGMENT

ANIL K.NARENDRAN , J.

The appellant is the defendant in O.S.No.664 of 2008 on the file of the Court of the Additional Subordinate Judge of Kottayam. The said suit was filed by the respondents herein seeking partition of plaint schedule item Nos.1 to 3. In that suit, the respondents/plaintiffs filed I.A.No.1909 of 2013 under Order XL Rule 1, read with section 151 of the Code of Civil Procedure, 1908 seeking the appointment of a Receiver and to commit plaint schedule item No.3 property to the possession, custody and management of the Receiver by removing the appellant/defendant from its possession, so as to protect the said property and for its proper management.

2. The trial court by order dated 27.11.2014 allowed the said application and the Official Receiver was appointed as Receiver to manage, protect and preserve plaint schedule item No.3 property and the appellant/ defendant was permitted to continue in possession of the said property, after fixing a monthly user fee and collecting the same from him. The Official Receiver was also directed to file a statement of accounts periodically. Aggrieved by the said order passed by the trial

court, the appellant/defendant is before us in this appeal.

3. By order dated 16.12.2014, this Court has passed the following order in I.A.No.1867 of 2014.

".....If as on today the Official Receiver, Kottayam has not taken possession of item No.3 of the plaint schedule in O.S.No.664 of 2008 on the file of the Court of the Additional Subordinate Judge of Kottayam, there will be an interim order staying the operation of and all further proceedings pursuant to the order passed by the Court of the Additional Subordinate Judge of Kottayam on 27.11.2014 in I.A.No.1909 of 2013 in O.S.No.664 of 2008. The petitioner shall not however commit acts of waste in the suit property, alter its fiscal features, alienate it, induct strangers into possession or encumber it, pending disposal of this appeal."

4. We heard the arguments of the learned counsel for the appellant/defendant and also the learned counsel for the respondents/plaintiffs.

5. The learned counsel for the respondents/plaintiffs submitted that, the respondents/plaintiffs have no objection in the appellant/defendant being appointed as the Receiver to manage, protect and preserve the plaint schedule item No.3 property and that he can also be permitted to continue in possession of the said item of property, on payment of the monthly user fee as may be fixed by the trial court. It was also submitted that the appellant/defendant should file periodical statement of accounts before the trial court in relation to

the said item of property.

6. In view of the aforesaid submission made by the learned counsel for the respondents/plaintiffs, we dispose of this appeal by modifying the order dated 27.11.2014 passed by the court below on I.A.No.1909 of 2013 in O.S.664 of 2008 to the effect that, instead of the Official Receiver, the trial court shall appoint the appellant/defendant as the Receiver to manage, protect and preserve plaint schedule item No.3 property. He will be permitted to continue in possession of the said item of property on payment of the monthly user fee to be fixed by the court below, which the court below shall fix within a period of one month from the date of receipt of a certified copy of this judgment. On such monthly user fee being fixed by the trial court, the appellant/defendant shall deposit the same before the trial court, including arrears from the date of filing of the suit, within the time limit that may be fixed by the trial court and shall continue to deposit the user fee for the subsequent months until otherwise ordered by the trial court. The appellant/defendant shall file periodical statement of accounts before the court below once in every three months. The appellant/defendant shall not commit acts of waste in the plaint schedule item No.3 property, alter its physical features, alienate it, induct strangers into possession or encumber it, pending disposal of the suit.

7. The order of the court below dated 27.11.2014 in I.A.No.1909 of 2013 in O.S.No.664 of 2008 is modified to the extent indicated above.

Since the suit is of the year 2008, we direct the trial court to finally dispose of the suit within a period of six months from the date of receipt of a certified copy of this judgment.

Sd/-
P.N.RAVINDRAN,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn