

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

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

Mat.Appeal.No. 1256 of 2015 ()

**I.A.NO.288/2015 IN OP 220/2015 of FAMILY COURT, THODUPUZHA
DATED 18-11-2015**

APPELLANT(S)/PETITIONER :

**RATNAMMA, AGED 71 YEARS,
W/O.RAGHAVAN NAIR
RESIDING AT SREENILAYAM @ CHERUVALLIL HOUSE
MADAKATHANAM P.O, MANJALLOOR VILLAGE
MUVATTUPUZHA TALUK.**

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S):

- 1. RAGHAVAN NAIR, AGED 74 YEARS,
S/O.RAMAN NAIR
RESIDING AT SREENILAYAM @ CHERUVALLIL HOUSE
MEEKADAMBU P.O, AMBALAPADY BHAGAM, VALAKAM VILLAGE
MUVATTUPUZHA TALUK 686 663.**
- 2. PARTHASARATHI
S/O.KRISHNAN NAIR, MADATHIL PUTHENVEETIL HOUSE
VENGOLA KARA, VENGOLA VILLAGE, KUNNATHUNADU TALUK
ERNAKULAM DISTRICT. 686 601.**

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

VS

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

Mat Appeal No.1256 of 2015

Dated this the 11th day of December, 2015

JUDGMENT

C.K.Abdul Rehim, J

The above matrimonial appeal is instituted against the order of the Family court, Thodupuzha in I.A.No.288/15 in O.P.No.220/15. Case before the Family court was filed by the petitioner herein, seeking declaration of his title and possession over B-scheduled property and to declare that the respondent has no manner of right over the said property. A consequential relief by way of permanent prohibitory injunction restraining the respondent and his men from trespassing into the B-scheduled property and from doing any act causing disturbance to the peaceful possession and enjoyment of the petitioner, was also sought for.

2. I.A.No.288/15 was filed along with original

petition, seeking for a temporary injunction restraining the respondent from creating any documents or from inducing any third party into the scheduled property and restraining him and his men from trespassing into the said property and from doing any act of waste and mischief. At the time when the suit was moved, the court below had granted an ad interim order of injunction in I.A.No.288/15. Subsequently the respondents entered appearance and filed their objections. After elaborated consideration of the matter, the court below had vacated the interim order granted on 04.08.2015, through an order passed on 18.11.2015, which is impugned in this appeal.

3. The order of the Family court is assailed based on various contentions. It is argued that the court below ought to have found that the petitioner is in possession and enjoyment of the property. It is contended that the aspect of balance of convenience has not been taken into proper consideration, that if no interim injunction granted there is every chance of the respondent evicting the petitioner

forcefully from the scheduled property. It is also contended that if the respondents are not restrained through an order of interim injunction, there is every chance of them creating further alienation of the property, or they may create charge on the property, or may commit waste or mischief in the property. It is argued that the issue was not dealt with by the court below with proper application of mind after adverting to the factual circumstances and evidence on its real perspective.

4. Admittedly, documents related to title of the property, which is the 'patta' issued, stands in the name of the 1st respondent. The 1st respondent had produced Ext.B1 to B6 documents relating to the property. Ext.B1 tax respect, Ext.B2 encumbrance certificate, Ext.B3 copy of the 'Patta', Ext.B4 certificate of genuine custody of the property, Exts.B5 and B6 survey plans etc. would prima facie indicate that the title and possession is vested with the 1st respondent. It is brought to notice of the court below that, the property stands transferred in favour of the 2nd

respondent as on 01.04.2015, by virtue of sale deed executed by the 1st respondent in favour of the 2nd respondent. Eventhough the petitioner claimed possession over the property, her averments in the affidavit filed in support of I.A.No.288/15 is only to the effect that, she had shifted residence from the said property about 10 years ago. It is stated that the house situated in the property had fallen down. But she claimed that she had continued in possession and enjoyment of the property by looking after the agricultural activities therein. It is evident from the records that an Advocate Commissioner was appointed at the request of the petitioner to inspect the property. But in the application for appointment of the Commissioner, the petitioner only sought for ascertainment of the nature and lie of the property, demarcation of its boundaries, report regarding improvements, ascertainment of the situation of the house etc. None of the above matters, even if reported by the Advocate Commissioner would lead to any inference regarding possession or enjoyment of the property by the

petitioner. On the other hand, all documentary evidence are in favour of the first respondent to show that he was holding absolute title over the property and was entitled to transfer the same to the 2nd respondent. The court below found that, there is no materials to prove that the transfer in favour of the 2nd respondent is a sham transaction and is made not for any valid consideration. Hence, it is found that the petitioner had failed in proving any prima facie case entitling her for getting a temporary injunction, as prayed for.

5. Learned counsel for the petitioner contended that, if the respondents are not restrained at least from creating any further alienation, the petitioner will be put to severe prejudice and irreparable legal injuries. We are not convinced to accept such a contention because any further alienation, even if made, will be only pendente lite, which will be hit by provision of the Transfer of Property Act.

6. Lastly it is contended that on such an event, it will lead to multiplicity of proceedings. But that alone is not a matter which can be taken into consideration for granting

an interim injunction pending disposal of the suit, which may put the respondents to irreparable loss or injuries.

7. Having found existence of the facts and circumstances as mentioned above, we do not find any error of jurisdiction committed by the court below, warranting interference by this Court. There is no illegally impropriety or manifest error with respect to the order under challenge. Hence the appeal fails and the same is hereby dismissed. The court below will proceed with the trial of the suit and shall dispose of the same based on the evidence on record, untrammelled by any observations contained herein.

The Family court will take all earnest efforts to dispose of the original petition at the earliest possible.

Sd/-

C.K.ABDUL REHIM, JUDGE

Sd/-

MARY JOSEPH, JUDGE

VS