

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

OP(C).No. 1065 of 2012 (O)

AGAINST THE ORDER IN IA 1579/2011 IN AS 37/2010 of SUB COURT,
OTTAPPALAM DATED 18.02.2012

PETITIONER:

P.V.SANTHA, AGED 58 YEARS
W/O.LATE PAPPU, PAVUPPADAM VEEDU
ARAKURUSSI AMSOM AND DESOM, MANNARKKAD TALUK.

BY ADVS.SMT.T.D.RAJALAKSHMI
SRI.R.SREEHARI

RESPONDENTS:

1. NARAYANAN,
S/O.ASARI KUNHAPPU (LATE)
2. SUNDARI,
W/O.NARAYANAN
(BOTH ARE RESIDING AT PAVUPPADAM VEEDU
ARAKURUSSI AMSOM AND DESOM, MANNARKKAD TALUK
MANNARKKAD P.O.PIN-678582.

R1-R2 BY ADVS. SRI.N.NAGARESH
SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.T.V.VINU

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: PHOTO COPY OF JUDGMENT PASSED IN O.S.NO.122/2007 OF MUNSIF
MAGISTRATE COURT, MANNARKKAD, DT.27.02.2010.

EXT.P2: PHOTOCOPY OF THE MEMORANDUM OF APPEAL AS 37/2010 FILED
BEFORE THE SUBCOURT, OTTAPPALAM

EXT.P3: PHOTOCOPY OF WORK ORDER DT.08.04.2011 OF THE KERALA WATER
AUTHORITY

EXT.P3(a): PHOTOCOPY OF PLAN ATTACHED TO EXHIBIT P3 WORK ORDER.

EXT.P4: PHOTOCOPY OF AFFIDAVIT FILED IN SUPPORT OF IA 1579/2011 IN
AS NO.37/2010 OF SUB COURT, OTTAPPALAM.

EXT.P5: PHOTOCOPY OF THE OBJECTION FILED IN SUPPORT OF IA 1579/2011
IN AS 37/2010 OF SUB COURT, OTTAPPALAM

EXT.P6: PHOTOCOPY OF THE ORDER PASSED IN IA 1579/2011 IN AS
NO.37/2010 DATED 18.02.2012 OF SUB COURT, OTTAPPALAM.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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SUNIL THOMAS, J.

O.P.(C) No. 1065 of 2012

Dated this the 20th day of August, 2015

JUDGMENT

The plaintiff in OS No.122/2007 of the Munsiff Magistrate Court, Mannarkkad is the petitioner herein.

2. The suit was one for permanent prohibitory injunction, claiming right of way through the Plaint B Schedule property. The defendants appeared and filed their pleadings and thereafter the parties went for trial. After trial, the court held that the plaintiff is not entitled for any relief and dismissed the suit. This was carried in appeal A.S.No.37/2010, which is now pending before the Subordinate Judge's Court, Ottappalam.

3. Pending this appeal, the petitioner/appellant, filed an application before the appellate court, for drawing a pipeline through the plaint B schedule property to take water. This was resisted by the respondents/defendants. By the impugned order Ext.P6, the court below dismissed the application, holding that essentially it was a question depending on right over B Schedule Property which itself was the subject matter of the suit.

4. The above order is assailed in this writ proceedings.

5. After having hearing both sides in extenso, I feel that the question as to whether the plaintiff is entitled to draw a pipeline essentially depends on the rights of the parties, which itself is the subject matter of the suit and consequently, in the appeal. Pending the appeal, any finding on that aspect though, at interim nature, might touch upon the merits of the case also. That being the position, the court below was justified in not granting interim relief.

6. It is submitted by both sides that the appeal is now ripe for hearing . The interest of justice will be served, if the court below is directed to expedite the hearing of the appeal itself, rather than directing the court below to consider the inter interlocutory application, which may only further delay the proceedings.

In the result, the OP is disposed of with a direction to the appellate court to dispose of the appeal itself, as expeditiously as possible, at any rate within a period of four months from the date of receipt of this judgement, untrammelled by any of the observations, made in the Interlocutory Order or in this OP.

Sd/-
SUNIL THOMAS, JUDGE

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