

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

OP(C) .No. 98 of 2015 (O)

AGAINST THE COMMON ORDER IN I.A.NO.203/2014 AND
I.A.NO.204/2014 IN O.S.No.594/2012 ON THE FILE OF THE
SUBORDINATE COURT, KANNUR

PETITIONER/PETITIONER/PLAINTIFF:

KAYAKKAL CHANDROTH MINEESH, AGED 36 YEARS,
S/O.NARAYANAN, PWD CONTRACTOR, MAVILAKANDY HOUSE,
P.O. CHIRAKKAL, KANNUR-670 011.

BY ADV. SRI.K.RAJESH SUKUMARAN

RESPONDENT/RESPONDENT/DEFENDANT:

M.A.KARIM, AGED ABOUT 60 YEARS,
FATHER'S NAME NOT KNOWN, M.A.HOUSE, P.O.CHALAD
VIA PALLIYAMOOLA, NETAJI ROAD, KANNUR,
PIN-670 014.

R1 BY ADVS. SRI.P.BHARATHAN
SRI.ZUBAIR PULIKKOOL

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(C) .No. 98 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

EXT P1 COPY OF THE PLAINT IN OS 594/2012 ON THE FILE OF THE
SUBORDINATE COURT, KANNUR.

EXT P2 COPY OF THE WRITTEN STATEMENT FILED IN OS 594/2012 ON
THE FILE OF THE SUBORDINATE COURT, KANNUR.

EXT P3 COPY OF THE AFFIDAVIT AND PETITION IN IA 203/2014 IN OS
IN OS 594/2012 ON THE FILE OF THE SUBORDINATE COURT, KANNUR.

EXT P4 COPY OF THE AFFIDAVIT AND PETITION IN IA 204/2014 IN OS
594/2012 ON THE FILE OF THE SUBORDINATE COURT, KANNUR.

EXT P5 COPY OF THE COMMON ORDER DATED 29-10-2014 IN IA
203/2014 AND IA 204/2014 IN OS 594/2012 ON THE FILE OF THE
SUBORDINATE COURT, KANNUR.

RESPONDENT'S EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/29/5/15

B.KEMAL PASHA, J.

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O.P.(C). No.98 of 2015

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Dated this the 28th day of May, 2015

J U D G M E N T

The petitioner, who is the plaintiff in O.S.No.594 of 2012 of the Subordinate Judge's Court, Kannur, is challenging Exhibit P5 order passed by the court below in I.A.Nos.203 and 204 of 2014 in the said suit.

2. Exhibit P1 suit is one for recovery of possession based on title. According to the petitioner, as he was aware of the identity of the defendant as the person, who interfered with his possession as the neighbouring property owner, he filed the suit by impleading the respondent alone as the sole defendant.

3. The defendant filed a written statement contending that the suit is bad for mis-joinder and non-joinder and the

defendant is not a necessary party to the suit. It is contended that the defendant, who is the respondent herein, has no property anywhere near the plaint schedule property. When the petitioner could collect the correct name and address of the adjacent property owner, he was sought to be impleaded through Exhibit P3 impleading application. For carrying out consequential amendments, Exhibit P4 application was also filed.

4. It seems that the defendant has resisted Exhibits P3 and P4 and contended that the petitioner ought to have filed a fresh suit by impleading the additional 2nd defendant, who was sought to be impleaded as the sole defendant in such a suit, after withdrawing Exhibit P1 suit. It seems that through Exhibit P5 order, the court below has accepted the said view expressed by the defendant, who is the respondent herein and dismissed Exhibits P3 and P4. As through Exhibit P5 order.

5. Heard learned counsel for the petitioner and the

learned counsel for the respondent.

6. It seems that the court below is carried away in passing Exhibit P5 order. According to the petitioner, he knew the identity of the present respondent alone as the person who had interfered with the possession of the petitioner over his property and that was the reason why he had impleaded the said person. On enquiries, the petitioner came to know the correct name and identity of the actual title holder of the adjacent property and that was the reason why he was sought to be impleaded as the additional 2nd defendant, through Exhibit P3. At any stretch of imagination, it cannot be considered that the view taken by the court below in Exhibit P5 is correct. The court below ought to have allowed Exhibits P3 and P4 I.As. The dismissal of those I.As through Exhibit P5 order has resulted in substantial miscarriage of justice. The petitioner should not have been driven away by the court below for exploring the possibility of filing another suit. Exhibit P5 order is liable to be set aside.

In the result, this Original Petition (Civil) is allowed and Exhibit P5 order is set aside and Exhibits P3 and P4 applications stand allowed. The court below shall proceed with the suit.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/28/5/15