

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

OP(C).No. 225 of 2015 (O)

**CMA.NO. 23/2013 OF SUB COURT, NEDUMANGAD IN OS 459/2013 OF MUNSIFF
COURT, NEDUMANGAD.**
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PETITIONER(S):

1. SATHYAN, S/O.JOVEL NADAR,
ARUNVILASOM VEEDU, ARUVIPPURAM,
MUTHUVILA P.O, NEDUMANGAD,
THIRUVANANTHAPURAM - 695 610.
2. PREETHA KUMARI, W/O.SATHYAN,
ARUNVILASOM VEEDU, ARUVIPPURAM,
MUTHUVILA P.O, NEDUMANGAD,
THIRUVANANTHAPURAM - 695 610.

BY ADV. SRI.A.S.SHAMMY RAJ

RESPONDENT(S):

1. VIJAYADHARAN, UPASANA,
OPP. VIKAS BHAVAN POLICE QUARTERS,
VANCHIYOOR VILLAGE, NOW RESIDING AT
PEARL VIEW, MGRA 23, IKD ROAD, MARAPPALAM,
THIRUVANANTHAPURAM - 695 004.
2. SUDHAKARAN, S/O.NANU, AMBADI,
SREEKARYAM, THIRUVANANTHAPURAM - 695 017.
3. CHANDU NAIR, S/O.DAMODARAN PILLAI,
POOCHADIYIL VEEDU, MUTHUVILA P.O,
THIRUVANANTHAPURAM - 695 610.

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 225 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1: TRUE COPY OF THE PLAINT IN OS.NO. 459/2013 ON THE FILE OF MUNSIF COURT, NEDUMANGADU.
- EXHIBIT P2: TRUE COPY OF THE INJUNCTION ORDER DATED 13.6.2013 IN OS.NO. 459/2013 ON THE FILE OF MUNSIF COURT, NEDUMANGADU.
- EXHIBIT P3: TRUE COPY OF THE 1ST COMMISSION REPORT IN OS.NO. 459/13 ON THE FILE OF MUNSIF COURT, NEDUMANGADU.
- EXHIBIT P4: TRUE COPY OF THE ORDER OF THE R.D.O DATED 17.6.2013.
- EXHIBIT P5: TRUE COPY OF THE ORDER IN IA.NO. 2065/2013 DATED 29.8.2013 IN OS.NO. 459/2013 ON THE FILE OF THE MUNSIF COURT, NEDUMANGADU.
- EXHIBIT P6: TRUE COPY OF THE ORDER IN CMA.NO. 23/2013 DATED 17.10.2014 ON THE FILE OF SUB COURT, NEDUMANGADU.
- EXHIBIT P7: TRUE COPY OF THE PROSECUTION PETITION IN OS.NO. 459/2013 ON THE FILE OF MUNSUFF COURT, NEDUMANGADU.
- EXHIBIT P8: TRUE COPY OF THE 2ND COMMISSION REPORT IN OS.NO. 459/2013 ON THE FILE OF MUNSIF COURT, NEDUMANGADU.
- EXHIBIT P9: COPY OF THE PHOTOGRAPHS SHOWING THE VIOLATION.
- EXHIBIT P10: TRUE COPY OF THE ORDER IN WPC.NO. 28914/2014 OF THIS HONOURABLE COURT DATED 5.11.2014.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.BHAVADASAN, J.

O.P.(C) No.225 of 2015

Dated this the 28th day of January, 2015

J U D G M E N T

The petitioner as plaintiff instituted O.S.No. 459/2013 before the Munsiff Court, Nedumangadu for certain reliefs including the relief in respect of a way which runs through the property of the defendant.

2. Along with the suit, he moved an interlocutory application for interim relief in which an exparte order of injunction was passed. The defendants in the suit then moved the R.D.O. complaining of dumping of soil on his property by the plaintiff and seeking reliefs from the R.D.O. The R.D.O. passed Ext.P4 order dated 17.06.2013. That order was challenged by the petitioners in W.P.No. 28914/2014 and this Court while admitting the same granted an interim order as prayed for, for a period of three weeks. This Court is given to understand that the said order has been subsequently extended and the said order is in

force. Therefore, it is clear that this Court has put the order of the R.D.O. in jeopardy and it can not now be executed without getting an order from this Court.

3. The petitioner points out that in the meanwhile, the respondents moved the Munsiff Court for removal of dumped soil in pursuance to the R.D.O.'s order and Ext. P5 order has been passed whereby a Commissioner has been deputed by the court below to remove the soil alleged to have been dumped on the property by the defendants. That order was challenged in appeal and Ext.P6 order was passed by the appellate court declining to interfere with the order.

4. In the meanwhile, it is claimed by petitioners that the defendants in the suit with scant respect to the orders passed by the Munsiff Court by continuing the process created a trench in the pathway, obstructing the use of the pathway by the plaintiff. The petitioners therefore moved the court below for violation of the order and filed necessary petitions and sought appropriate reliefs. That is pending

consideration.

5. After the appeal was disposed of by the lower appellate court, it is alleged that the respondents moved the Munsiff Court, for implementation of Ext.P5 order which intends to give effect to the R.D.O.'s order.

6. The grievance of petitioners is that the R.D.O.'s order cannot now be enforced in the light of the order of stay granted by this Court and without considering the petition for violation of injunction, it will not be appropriate for the court below to proceed with the matter.

7. It appears that the interlocutory application on which an ex parte order of injunction was granted has not been finally disposed of. It is pending orders on that petition, all these exercises have been undertaken.

8. Whatever that be, if the intention of the court below is to implement the R.D.O.'s order by way of Ext.P5 order, that cannot now be done in the light of the order of stay passed by this Court in W.P.No. 28914/2014 by order

dated 05.11.2014 whereby this Court has granted a stay of the impugned order passed by the R.D.O.

9. The court below may well keep in mind the order passed by this Court in the above mentioned writ petition wherein the first respondent is a party to the proceedings. He is aware of the order of this Court.

10. It is to be noticed that the court while dealing with the subsequent petitions alleged to have been filed by the respondents may remember that the order of the R.D.O. stands stayed by this Court.

With this observation, the original petition is disposed of.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge