

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

OP(C).No. 249 of 2015 (O)

**AGAINST THE ORDER IN CMA 12/2014 of ADDL.DISTRICT COURT & ADDL.MUNSIFF
COURT, ALAPPUZHA. DATED 15-01-2015**

PETITIONER :

**HARIKUMAR, AGED 45 YEARS
S/O.LATE CHELLAPPAN PILLAI,
NEDUMPARAMBIL HOUSE,
PADAHARAM, THAKAZHI VILLAGE,
THAKAZHI.P.O.
ALAPPUZHA.**

**BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA**

RESPONDENT :

**GOPALAKRISHNAN NAIR, AGED 63 YEARS
S/O.LATE CHELLAPPAN PILLAI, SASIKALYALAYAM
THAKAZHI.P.O., ALAPPUZHA. 688 562.**

BY SRI.K.S.HARIHARAPUTHRAN.

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 29-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

OP(C).No. 249 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : TRUE COPY OF PLAINT IN OS.174/14 FILED BY PETITIONER BEFORE
MUNSIFF COURT, ALAPPUZHA.**
- EXT.P2 : TRUE COPY OF ORDER DATED 28.2.2014 IN IA.818/14.**
- EXT.P3 : TRUE COPY OF COUNTER OF RESPONDENT IN IA.818/14.**
- EXT.P4 : TRUE COPY OF ORDER DATED 2.4.2014 IN IA.818/14.**
- EXT.P5 : TRUE COPY OF ORDER IN IA.522/14 IN CMA.NO.12/2014 OF DISTRICT
COURT, ALAPPUZHA.**
- EXT.P6 : TRUE COPY OF ORDER DATED 15.1.2015 IN CMA NO.12/2014.**
- EXT.P7 : TRUE COPY OF IA NO.1247/2014 FOR AMENDMENT.**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

P.BHAVADASAN, J.

O.P.(C) No. 249 of 2015

Dated this the 29th day of January, 2015

JUDGMENT

Aggrieved by that portion of the order whereby the appellate court declined to grant interim order to the plaintiff, the petitioner has come up with this Original Petition.

2. The petitioner instituted O.S.No.174 of 2014 before the Munsiff Court, Alappuzha seeking permanent injunction restraining the respondent and his men from reclaiming the pond situated in the plaint schedule property. Along with the suit the filed I.A.No.818 of 2014 for interim injunction.

3. The defendant filed counter to the interim application. The case of the defendant is that one Remani Amma assigned the property in favour of the plaintiff and the defendant in the year 1982. Later in the year 2005 the defendant purchased the half right of the plaintiff over the property.

4. Thereafter, the plaintiff filed an amendment

application seeking to incorporate a prayer to declare that the alleged sale deed produced by the defendant as null and void and not binding on the plaintiff.

5. The trial court has considered the matter in detail and ultimately came to the conclusion that on the facts of the case the petitioner is not entitled to get an interim injunction as prayed for and dismissed the petition.

6. Aggrieved by the order of the trial court, the plaintiff filed CMA No. 12/2014. The lower appellate court on an independent consideration of the materials before it found no reason to interfere with the order and dismissed the appeal. However, the lower appellate court directed the trial court to dispose of the suit within four months of receipt of the records.

7. Learned counsel for the petitioner attacked the finding of the lower appellate court on the ground that as on the date of the suit the plaintiff is in absolute possession which is evident from Ext.C1.

8. There is no merit in the above submission at all.

Both courts considered the materials independently and came to an identical conclusion.

This Court finds no grounds to interfere with the order of the court below. This petition is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE