

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

OP(C).No. 259 of 2015 (O)

OS.NO.426/2009 OF ADDITIONAL MUNSIFF'S COURT, CHERTHALA

PETITIONER(S)/PLAINTIFF:

**SOUMYA, AGED 29 YEARS
D/O.THILAKAN, AROOR VILLAGE, CHANDIROOR MURI AND POST
CHERTHALA TALUK, ALAPPUZHA DISTRICT 688 547.**

**BY ADVS.DR.V.N.SANKARJEE
SRI.S.SIDHARDHAN
SRI.V.N.MADHUSUDANAN
SRI.PRATHAP. S.R.K.
SMT.R.UDAYA JYOTHI
SMT.M.SUSEELA**

RESPONDENT(S):

- 1. T.A DALFIN, AGED 40 YEARS
S/O.AUGUSTINE, ALUNGAL HOUSE, CHELLANAM P.O
KOCHI 682 008.**
- 2. GEORGE JOSEPH, AGED 65 YEARS
S/O.AUGUSTINE, 4/460, THEKKE ALUNGAL HOUSE
CHELLANAM VILLAGE PANCHAYAT, CHELLANAM MURI
CHELLANAM P.O, KOCHI 682 008.**
- 3. DILRAJ, AGED 43 YEARS
S/O.CHANDRAN, 13/659, ELOOR VILLAGE
PARAVUR TALUK, ERNAKULAM DISTRICT.**

**BY ADVS. SRI.T.MADHU
SRI.K.A.JIBIN JOSEPH**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-02-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 259 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1** TRUE COPY OF THE PLAINT DATED 25-08-2009 IN O.S NO 426/2009 OF THE MUNSIFF'S COURT,CHERTHALA
- EXHIBIT P2** TRUE COPY OF TRUE COPY OF THE WRITTEN STATEMENT DATED 10-11-2009 IN O.S NO 426/2009 OF THE MUNSIFF'S COURT,CHERTHALA
- EXHIBIT P3** TRUE COPY OF I.A NO 3470/2009 DATED 25-08-2009 IN O.S NO 426/2009 OF THE MUNSIFFS COURT,CHERTHALA
- EXHIBIT P4** TRUE COPY OF THE ORDER DATED 25-08-2009 I.A NO 3470/2009 IN O.S NO 426/2009 OF THE MUNSIFFS COURT,CHERTHALA
- EXHIBIT P5** TRUE COPY OF THE PETITION DATED 17-10-2014 IN I.A NO 4085/2014 IN O.S NO 426/2009 OF THE MUNSIFF'S COURT,CHERTHALA
- EXHIBIT P6** TRUE COPY OF THE APPLICATION I.A NO 154/2015 DATED 8-1-2015 IN O.S NO 426/2009 OF THE MUNSIFF'S COURT,CHERTHALA
- EXHIBIT P7** TRUE COPY OF THE OBJECTION DATED 14-1-2015 IN I.A NO 154/2015 IN O.S NO 426/2009 OF THE MUNSIFF'S COURT,CHERTHALA
- EXHIBIT P8** TRUE PHOTOGRAPHS(3 IN NUMBER) SHOWING THE ILLEGAL CONSTRUCTION IN ITEM NO 2

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.BHAVADASAN, J.

O.P.(C) No. 259 of 2015

Dated this the 10th day of February, 2015

J U D G M E N T

The petitioner is the plaintiff in O.S.No. 426/2009 before the Additional Munsiff Court, Cherthala. He instituted suit in respect of two items; item No.1 consisting of 8 cents and item No.2 consisting of 2 cents and item No.2 forming a part of Item No.1. In respect of item No.1, the relief sought for was one for injunction while as far as item No. 2 was concerned, the relief sought for was for declaration and recovery of possession on the strength of title and for other consequential reliefs.

2. The petitioner, along with the suit, filed I.A.No. 3470/2009 against the defendants seeking to restrain them from creating documents and committing waste and putting up construction in the property. Ext.P4 order was issued in favour of the petitioner.

3. This Court is given to understand that both the plaintiff and the original defendant obtained properties from the sharers of a common partition deed. It so happened that the original defendant transferred the property to the second defendant and the second defendant transferred the property to defendant Nos. 3 to 5. Thereafter, the plaintiff took steps and had the first defendant and the second defendant deleted from the party array.

4. Being a suit for fixation of boundary etc. and delivery of possession also, the petitioner sought for issuance of a Commission and the order was passed to that effect. The petitioner would say that for not due to his default or his laches and in fact he had made all the documents available to the Commissioner for carrying out the work, the Commissioner could not go and execute the order. It so happened that later the application came to be dismissed for default.

5. Thereafter, the suit was included in the list. The petitioner moved an application to restore the Commission application to file and also to adjourn the suit from the list. That petition was dismissed and the suit was dismissed for default. Ext.P5 restoration application was filed by the petitioner. That is pending consideration.

6. The grievance in this original petition is that taking aid of the dismissal of the suit, the defendants are carrying on construction in item No.2 which may cause irreparable loss and injury to the petitioner, if he succeeds in the suit. He therefore prays that there may be a direction to the court below to expedite the hearing of Ext.P5 restoration application and in the meanwhile, to issue an order of injunction restraining the respondents before this Court from carrying on the construction.

7. The learned counsel appearing for the respondent on the other hand contended that the construction has been going on for a long time and there is no merit in the

submission made before this Court. It is also pointed out that the second respondent in the restoration application is not a party to the suit and that fact may be taken note of.

8. The learned counsel appearing for the petitioner then pointed out he has filed amended plaint in which all the persons are shown as parties.

9. Whatever that be, the suit was dismissed for default and the restoration application is pending. Photographs shown to this Court show that construction has progressed to a good extent in B schedule.

10. If the suit is restored to file, the construction will be during the pendency of the litigation and that cannot normally confer to any special rights or interest in favour of the respondents.

11. Considering the present state of affairs, it may not be advisable or may not be in the interest of justice to restrain the defendants from carrying on the construction.

However, this petition is disposed of directing the Munsiff Court, Cherthala to take up Ext.P5 application at the earliest and dispose it of as expeditiously as possible, at any rate, within period of one month from the date of receipt of a copy of this judgment, provided, the service of notice is complete and no other petitions are pending for consideration. It is also made clear that any construction made by the respondents during the pendency of the proceedings will be subject to the result of the suit and it will be done at their risk and cost.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge