

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

OP(C).No. 279 of 2015 (O)

(Against the order dtd.27.1.15 in I.A.258/15 in O.S.7/15 of MUNSIF COURT,
CHERTHALA)

PETITIONERS:

1. USHAVUTHURUTHU PADASEKHARA NELLULPADAKA SAMITHI
REG. NO.83, (INCORRECTLY MENTIONED O AS "UZHAVUTHURUTHU
NELLULPADAKA KARSHAKA SANGHOM")
ULAVAIPPU, CHERTHALA, REP. BY ITS PRESIDENT
K.M.SHIYAS, S/O.K.C.MOHAMMEDKUNJU, JASEENA MANZIL
POOCHAKKAL P.O.CHERTHALA.
2. SECRETARY, SIVASANKARAN NAIR, AGED 67 YEARS
S/O.BHASKARAN NAIR, RESIDING AT PICHANATTU
ULAVAIPPU P.O., CHERTHALA.

BY ADV. SRI.B.PRAMOD

RESPONDENT:

JOSEPH P.J.
S/O.OUSEPH, POOTHUVALLY, ULAVAIPPU MURI
THYCAUTTUSSEERRY VILLAGE - 688 525.

BY ADV. SRI.V.M.KURIAN
BY ADV. SRI.MATHEW B. KURIAN
BY ADV. SRI.K.T.THOMAS

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 27-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- P1- TRUE COPY OF THE VOUCHERS DATED 1.3.2011, 6.3.2012 AND 26.1.2014 ISSUED BY THE RESPONDENT AFTER RECEIPT OF THE RENTAL DUE TO HIM IN THE YEAR 2011, 2012 AND 2014.
- P2- TRUE COPY OF THE AGREEMENT DATED 18.5.2012.
- P3- TREU COPY OF THE AGREEMENT DATED 4.8.2014.
- P4- TRUE COPY OF THE NOTICE DATED 16.7.2014.
- P5- TRUE COPY OF THE I.A NO.30/2015 ALONG WITH ACCOMPANYING AFFIDAVIT IN O.S.NO.7/2015 ON THE FILE OF THE MUNSIFF'S COURT, THERTHALA.
- P6- TREU COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITONER IN I.A. NO.30/2015 ALONG WITH ACCOMPANYING AFFIDAVIT IN OS.NO.7/2015 ON THE FILE OF THE MUNSIFF'S COURT, CHERTHALA.
- P7- TRUE COPY OF THE I.A.NO.258/2015 ALONG WITH ACCOMPANYING AFFIDAVIT IN O.S.NO.7/2015 ON THE FILE OF THE MUNSIFF'S COURT, CHERTHALA.
- P8- TRUE COPY OF THE COMMISSIONER'S REPORT.
- P9- TRUE COPY OF THE ORDER (TYPEWRITTEN DATED 27.1.2015 IN IA.NO.258/15 IN O.S.NO.7/2015 ON THE FILE OF THE MUNSIFF'S COURT, CHERTHALA
- P10- TRUE COPY OF THE I.A.NO.405/2015 IN O.SNO.7/2015 ON THE FILE OF THE MUNISIFFS COURT, CHERTHALA

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.279 OF 2015

Dated this the 27th day of February, 2015.

J U D G M E N T

An ambiguous order passed by the court below resulted in parties approaching this Court seeking reliefs.

2. The respondent who is the plaintiff in O.S.No.7/2015 was a member of the Padasekhara Nellulpadaka Samithy who is 1st defendant in the suit. They used to lease out properties for cultivation and pisciculture. This year plaintiff decided to disassociate himself from the Padasekhara Nellulpadaka Samithy. He therefore laid the suit for appropriate reliefs. When the Padasekhara Nellulpadaka Samithy decided to go on with their functioning, an Interlocutory Application for temporary injunction was filed which is pending and to which the petitioners herein filed objection.

3. While so, the petitioner before the court below took out a commission complaining of damages caused to his property. Initially such a commission was taken out to highlight the

damages that would be caused by opening the sluices causing rush of water to the outer ridge of the property. That was the main complaint voiced by the plaintiff in the suit. Commissioner has filed Ext.P8 report in which he has suggested that damages seen by him mentioned in paragraph 3 of the report could be due to the gush of water to paddy field from the western side of plaintiff's property. The petitioner before the court below therefore filed Ext.P7 petition for reliefs on which Ext.P9 order has been passed. The said order is under challenge in this original petition.

4. Even going by the Commissioner's report, Commissioner has only suggested that unless the outer ridge is strengthened, it may be possible that the gush of water may cause damage to the property. The petitioner points out that that has to be done by the Padasekhara Nellulpadaka Samithy and strengthening the inner side of the ridge is his liability. The court below has now ordered that status quo is to be restored as reported by the Advocate Commissioner. On going through the report, no restoration of status quo is suggested by the Commissioner.

Whatever that be, the issue now involved could be resolved by directing the defendants in the suit i.e. Padasekhara Nellulpadaka Samithy to strengthen the outer side of the ridge belonging to the plaintiff before letting in water to ensure that no damage is caused to the outer ridge. It is the liability of the plaintiff to strengthen the inner ridge. Ordered accordingly. The impugned order is set aside to the above extent.

This original petition is disposed of as above. There will be no order as to costs.

Sd/-

**P.BHAVADASAN
JUDGE**

smp