

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

OP(C).No. 291 of 2015 (O)

OS 255/2014 OF MUNSIFF COURT, KOCHI.
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PETITIONER(S):

1. REXY ROCKEY, AGED 56,
W/O.X.D.P.ROCKEY, ACORN GREEN,
SANTO GOPALAN ROAD, KOOVAPADAM,
KOCHI-682 002.
2. RINTU ROCKEY, AGED 29,
D/O.X.D.P.ROCKEY, ACORN GREEN,
SANTO GOPALAN ROAD, KOOVAPADAM,
KOCHI-682 002.

BY ADV. SRI.K.L.JOSEPH

RESPONDENT(S):

1. MARY ALIAS DAISY, AGED 80,
W/O.LATE T.J.ANTONY, THAYYIL HOUSE,
12/188-C KOOVAPADAM, KOCHI-682 002.
2. THRESSIA ALIAS LILLY, AGED 78,
W/O.JOSEPH, THEEYYATTUPARAMBIL HOUSE,
ARINJOOR MALA P.O, WYNAD - 670 121.
3. T.A. SAJAN, AGED 43,
S/O.LATE T.J.ANTONY, THAYYIL HOUSE,
12/188-C KOOVAPADAM, KOCHI-682 002.
4. CORPORATION OF KOCHI, PARK AVENUE,
KOCHI-682 011, REPRESENTED BY ITS SECRETARY.
5. ASSISTANT EXECUTIVE ENGINEER,
OFFICE OF THE ASSISTANT EXECUTIVE ENGINEER,
FORTKOCHI ZONAL OFFICE, CORPORATION OF KOCHI, PIN - 682 001.

R4 & R5 BY SRI.P.K.SOYUZ, SC

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 03-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP(C).No. 291 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 - TRUE COPY OF THE PLAINT IN O.S.255/2014 OF THE MUNSIFF'S COURT, KOCHI.
- EXT.P2 - TRUE COPY OF THE COMPLAINT DATED 05-04-2014 ADDRESSED TO THE CORPORATION OF KOCHI.
- EXT.P3 - TRUE COPY OF THE NOTICE BEARING FCP 2-718/2014 DATED NIL ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER CORPORATION OF KOCHI.
- EXT.P4 - TRUE COPY OF THE NOTICE DATED 01-07-2014 BEARING NO.W.Z.H3/377/14 ISSUED BY THE ASSISTANT HEALTH OFFICER TO THE 3RD RESPONDENT.
- EXT.P5 - TRUE COPY OF THE IMPEADING PETITION, I.A.1297/2014 IN O.S.255/2014.
- EXT.P6 - TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A.1297/2014 IN O.S.255/2014.
- EXT.P7 - TRUE COPY OF THE ORDER DATED 15-12-2014 IN I.A.1297/2014 IN O.S.255/2014 BEFORE MUNSIFF COURT KOCHI.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.BHAVADASAN, J.

Original Petition (Civil) No.291 OF 2015

Dated this the 3rd day of February, 2015.

J U D G M E N T

Aggrieved by Ext.P7 order dated 15.12.2014 in I.A.No.1297/2014 in O.S.No.255/2014, the petitioners before Munsiff Court, Kochi has come up with this original petition under Article 227 of the Constitution of India.

2. The respondents 1 to 3 before this Court instituted a suit as O.S.No.255/2014 against the Corporation of Kochi on receipt of Ext.P3 notice. By Ext.P3 notice, the Corporation asked the 3rd respondent to remove certain articles which, according to the Corporation, were kept in the puramboke land causing inconvenience to people residing nearby. The plaintiffs claimed that the property where articles are being stored belonged to them and they have not stored any article in the puramboke land or in the property belonging to the Corporation. On the basis of these pleadings, they laid the suit seeking permanent prohibitory injunction restraining the Corporation and their officers from

trespassing into the property.

3. The petitioners before this Court moved I.A.No.1297/2014 to have themselves impleaded in the suit as additional defendants. Their claim is that it was based on their complaint that Corporation had occasion to issue Ext.P3 notice and it is necessary that they also be impleaded in the suit and be heard. They therefore claim that they should be made as parties to the suit and they also may be allowed to agitate the issues involved. At any rate, according to them, they are proper parties if not necessary parties.

4. The court below, on evaluation of the materials before it and in the light of the objection raised by the plaintiffs in the suit, finding that the petitioners before it did not have any right over the property involved in the suit and since the plaintiff is the dominus litus and holding that the plaintiffs cannot be compelled to implead the petitioners before the court below, dismissed the petition.

5. Learned counsel appearing for the petitioners contended that petitioners are proper parties if not necessary parties in the

sense that it was on their complaint that proceedings were initiated and notice was issued to remove the articles. They, therefore, have a subsisting interest in the suit. Under those circumstances, it is contended that the petition ought to have been allowed.

6. Merely because the Corporation initiated steps on the basis of a petition said to have been filed by the petitioners does not mean that they have a right to get themselves impleaded in the suit. The claim of the petitioners was that the plaintiffs in the suit have stored articles in the puramboke land causing inconvenience to public. Corporation, after enquiry, issued notice to the plaintiffs in the suit claiming that the property where the article is stored is a puramboke land and that they have no right over the same and they be directed to remove the articles and it was under those circumstances, suit was laid. The petitioners before the court below and before this Court do not claim any right over the property. Their only grievance is that articles are being stored in puramboke land causing inconvenience to people residing nearby. If the complaint of the petitioners is that the act

of the plaintiffs causes nuisance to them and interference with their right, that is to be agitated by them in a separate suit. They cannot be allowed to enlarge scope of present suit to the detriment of the plaintiffs. Nothing prevents them from instituting a suit raising the above contention and they need not bring their contentions in a suit filed by the plaintiffs which is one for injunction restraining the Corporation from interfering with the plaint schedule property.

7. The plaintiffs in the suit had categorically stated that the property in which the articles were kept belongs exclusively to them and it is not puramboke land. The question that arises for consideration is whether the disputed property is puramboke land or property of the plaintiff. Obviously, petitioners have no role in the matter. If that be so, court below was justified in dismissing the petition.

This original petition is without merits and it is accordingly dismissed.

Sd/-

P.BHAVADASAN
JUDGE

smp