

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

OP(C).No. 346 of 2015 (O)

**IA.1406/2013 & IA.1134/2013 IN OS.147/2013 OF PRINCIPAL MUNSIF COURT,
KOZHIKODE**

PETITIONER(S)/PLAINTIFF:

**ASOKAN, AGED 53 YEARS
S/O.KANDAKUTTY @ CHANDRAN,
"AREKKAL, P.O KUTTIKKATTUR
KUTTIKKUTTUR AMSOM, DESOM,
KOZHIKODE TALUK.**

**BY ADVS.SRI.P.SANJAY
SMT.A.PARVATHI MENON**

RESPONDENT(S)/DEFENDANTS:

- 1. SIVADASAN, AGED 47 YEARS
S/O.SANKARAN, "AREKKAL HOUSE, P.O PERUMANNA
KUTTIKKUTTUR AMSOM, KOZHIKODE TALUK-673019**
- 2. DEESA, AGED 42 YEARS
W/O.SIVADASAN, P.O PERUMANNA, KUTTIKKUTTUR AMSOM
DESOM, KOZHIKODE TALUK PIN 673 019**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 06-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 346 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE PLAINT DATED 05-03-2013**
- EXHIBIT P2 TRUE COPY OF THE ORDER IN I.A NO 1406/2013 & I.A 1134/2013 IN O.S
147/2013 DATED 12-04-2013**
- EXHIBIT P3 TRUE COPY OF THE AMENDMENT PETITION I.A NO 4127/2014 IN O.S
NO 351/2014 DATED 17-11-2014**
- EXHIBIT P4 TRUE COPY OF THE PETITION I.A NO 4126/2014 IN OS NO 351/2014
DATED 17-11-2014**
- EXHIBIT P5 TRUE COPY OF THE IA 4129/2014 IN O.S NO 351/2014 DATED 17-11-2014**
- EXHIBIT P6 TRUE COPY OF THE ORDER IN IA NO 4127/2014 IN OS NO 351/2014
DATED 24-11-2014**
- EXHIBIT P7 TRUE COPY OF THE ORDER IN IA 4126/2014 IN OS NO 351/2014 DATED
18-11-2014**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P. BHAVADASAN, J.

O.P.(C). No. 346 of 2015

Dated this the 6th day of February, 2015.

JUDGMENT

A misconceived and ill-advised petition was filed before the court below seeking to amend the plaint incorporating a prayer for mandatory injunction.

2. The suit was one for permanent prohibitory injunction filed by the petitioner as plaintiff. In the suit an Interlocutory application was moved for interim injunction and the same was granted. It is submitted before this Court that since the interim order of injunction was violated, a crime was registered. Subsequently, in the light of the trespass made by the respondents before this Court during the pendency of the suit, the petitioner moved for amendment of the plaint to incorporate a prayer for mandatory injunction.

3. The court below dismissed the petition mainly on the ground that sufficient time had been granted for taking steps.

4. It is quite unnecessary for the petitioner to move an application for amendment of the plaint to incorporate a claim for mandatory injunction. The so-called trespass was made after the filing of the suit and after the passing of an interim order of injunction by the court below. If that be so, it is quite unnecessary for the plaintiff to amend the plaint for the simple reason that if the court ultimately finds that the plaintiff was in possession of the property as on the date of suit, it is within its power to restore the position available as on the date of suit and to find that the alleged occupation of the defendant was subsequent to the filing of the suit and in violation of the order of injunction. Viewed from that angle, even though the reason given for rejecting the amendment cannot be

supported, it is quite unnecessary for the plaintiff to pray for such a relief.

With the observation that in case it is found that the defendants have trespassed into the property subsequent to the filing of the suit and in violation of the order of injunction, the court below is certainly empowered to restore possession of the property to the plaintiff to its original state, this Original Petition is disposed of.

P. BHAVADASAN,
JUDGE

sb.