

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

OP(C).No.477 of 2015 (O)

**(I.A. NO.5321/2013 IN O.S.NO.447/2013 2ND ADDITIONAL SUB COURT,
ERNAKULAM).**

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PETITIONER:

**SUSAN JOSEPH,D/O.LATE K.C.JOSEPH,
KOCHUKALEEKKAL HOUSE,
MUNDASSERY MASTER ROAD,
MARADU NORTH P.O.**

BY ADV.SRI.P.K.RAGHAVAN

RESPONDENTS:

- 1. PRINCE THOMAS,S/O.O.J.THOMAS,D1,
4TH BLOCK,GALAXY EDIFICE VAZHAKKALA,
KOCHI-682 021.**
- 2. SANTHOSH THOMAS,S/O.O.J.THOMAS,
31/1028-M,OLASA DALE,FRIENDS AVENUE,
VYTTILA,KOCHI-682 019.**
- 3. RAMACHANDRAN NAIR,S/O.LATE NARAYANAN NAIR,
FLAT O.A-9,HIGHWAY GARDEN APARTMENTS,
VYTTILA,KOCHI-19.**
- 4. BOSCO D. MUNDACKAL,S/O.DEVASSYKUTTY,
MUNDACKAL HOUSE,CHANNANIKKAD P.O,
KOTTAYAM - 686 533.**
- 5. O.J.THOMAS,S/O.O.C.JOSEPH,TOPHY HOUSE,
OLASAYIL,KURISUMMOOD P.O,
CHANGANASSERY- 686 104.**
- 6. THOMAS LITTO,S/O.O.J.THOMAS,
TOPHY HOUSE,OLASAYIL,KURISUMMOOD P.O,
CHANGANASSERY- 686 104.**
- 7. JOHNY JOSEPH,S/O.C.J.JOSEPH,
AKKARAPATTY HOUSE,ABRAHAM MASTER ROAD,
PALARIVATTOM,KOCHI-25.**
- 8. JOSE N.I.,S/O.P.J.JOSEPH,
PUSHPALAYAM HOUSE,MADAPPILLY P.O
CHANGANASSERY-686546.**

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9. **P.J.PHILIP,S/O.P.J.JOSEPH,
PUSHPALAYAM HOUSE,MADAPPILLY P.O,
CHANGANASSERY-686546.**
10. **JOSHY PHILIP,S/O.P.J. PHILIP,
PUSHPALAYAM HOUSE,MADAPPILLY P.O,
CHANGANASSERY-686546.**
11. **CMDR.V.M.PHILIP,S/O.LATE V.T.MATHEW,
VADAKKEKULAM HOUSE,ST.SEBASTIAN ROAD,
KOCHI-682019**
12. **SAM JOSEPH,S/O.LATE K.C.JOSEPH,
NO.2A2,FIRST FLOOR,ABM TOWERS,
KADAVANTHRA POST,KOCHI-20.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 01-04-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1-TRUE COPY OF THE PETITION I.A.NO.5321/13 IN O.S.447/2013
DATED 11-11-2013 OF 2ND ADDL. SUB COURT, ERNAKULAM.

EXT.P2-TRUE COPY OF THE COUNTER AFFIDAVIT DATED 26-22-2013 -DO-.

EXT.P3-TRUE COPY OF THE DISMISSAL ORDER PASSED IN IA NO.5321/13 IN
O.S.447/2013 DATED 18-10-2014 2ND ADDL. SUB COURT,
ERNAKULAM.

EXT.P4:TRUE COPY OF COMMISSION APPLICATION I.A.652/2014 IN
I.A.NO.5321/2013 IN O.S.NO.447/2013 FILED BY THE PETITIONER BEFORE
THE II ADDITIONAL SUB COURT,ERNAKULAM.

EXT.P5:CERTIFIED COPY OF THE DISMISSAL ORDER PASSED IN
I.A.NO.5321/2013 IN O.S.NO.447/2013 BY THE II ADDITIONAL SUB
COURT,ERNAKULAM DATED 18.10.2014.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

P.BHAVADASAN, J.

O.P.(C) No. 477 of 2015

Dated this the 01st day of April, 2015

J U D G M E N T

Aggrieved by the order dated 18.10.2014 in I.A.No. 5321/2013 in O.S.No. 447/2013, the petitioner before the court below has come up with this original petition under Article 227 of the Constitution of India.

2. The petitioner claims to have obtained 8.765 cents of land along with a portion of a building comprised in Survey No. 674/1 in a decree for partition. According to her, after taking delivery of the property, she secured the portion obtained by her by putting up a barbed wire fencing with concrete pillars. She thus had her property separated from the rest of the property involved in the partition suit.

3. Her brother, Sam Joseph entered into an agreement for sale with respondents 1 to 11 before this Court, for sale of the property obtained by him which comes to about 11.567 cents of land. That property, according to

the petitioner, lies on the eastern side of the property which is shown as B in the final decree of O.S.No. 339/2004 in the name of Ammini Jose.

4. It appears that on failure of the 12th respondent herein who, proposed to sell the property to respondents 1 to 11, the respondents 1 to 11 instituted the present suit for specific performance. They also obtained an interim order of injunction in respect of the property, which was the subject matter of agreement for sale.

5. The complaint of the petitioner is that under the guise of the said injunction order, they are reducing a portion of the property belonging to the petitioner into their possession, which is illegal and not warranted. Coming to know about the high handed action of the respondents 1 to 11, the petitioner claims to have approached them and they initially removed the obstruction created by them. Later on, according to the petitioner, they again created trouble and reduced a portion of the property belonging to the petitioner

into their possession.

6. Under these circumstances, the petitioner filed I.A.No. 5321/2013 to get herself impleaded in the suit under Order I Rule 10(2) of the C.P.C.. She also applied for a Commission for ascertaining the identity of the property.

7. The petition was very vehemently opposed by the contesting respondents who pointed out that apart from the facts stated by the petitioner being untrue, even if the petitioner had any grievance regarding the act committed by the said respondents, her remedy was to institute an independent suit and not to poke her nose into the present suit.

8. The court below was inclined to accept the contention raised by the contesting respondents and dismissed the petition. That is assailed in this original petition.

9. The learned counsel appearing for the petitioner contended that the court below ought not to have dismissed

the petition and ought to have given an opportunity to the petitioner to establish her case and at any rate, a Commission ought to have been issued which would have put the things in the proper perspective and would have shown that the grievance voiced by the petitioner is true. Even assuming that the impleading petition was not allowed, there was no justification in dismissing the Commission application. It is also contended that the court below had omitted to note that under the guise of the injunction order, the property which belonged to the petitioner is being reduced into the possession of the contesting respondent which is *per se* illegal. Under such circumstances, she was entitled to be impleaded in the suit and she ought to have been heard.

10. The court below took the view that the suit being one for specific performance and the agreement was being between respondents 1 to 11 and the 12th respondent, that has nothing to do with the property possessed and owned by

the petitioner herein. If the grievance of the petitioner was that under the guise of the injunction order issued by the court, respondents 1 to 11 are trespassing into her property, that is an independent cause of action for which the petitioner may have to institute proceedings against him.

11. After having heard the learned counsel for the petitioner and after having perused the records and also after having gone through the order of the court below, there seems to be absolutely no grounds to interfere with the order of the court below. The petitioner has not produced the plaint, the injunction order and agreement for sale before this Court for perusal. The grievance of the petitioner is that under the guise of the injunction order, respondents 1 to 11, taking advantage of the said order, are trespassing into a portion of the property owned and possessed by the petitioner.

12. In order to verify the said fact, the above documents are absolutely necessary but they have not been

produced. Even apart from the said fact, if the petitioner has a case that her property is being trespassed upon by respondents 1 to 11, her remedy is to institute independent proceedings to safe guard her interest and her cause of action which she alleges to have based on the act alleged to have been done by the respondents 1 to 11 has nothing to do with the issue involved in the present suit. Viewed from that angle, the court below was justified in dismissing the petition.

13. However, neither the order of the court below nor the observations made by this Court while disposing of this petition will stand in the way of the petitioner establishing her rights independently in accordance with law.

With the above observations, this petition is dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge