

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

OP(C).No. 511 of 2015 (O)

CMA 12/2010 OF ADDITIONAL DISTRICT II, THIRUVANANTHAPURAM
OS 120/2002 OF PRINCIPAL MUNSIF COURT, THIRUVANANTHAPURAM

PETITIONER(S):

PRIYA.S, AGED 38 YEARS,
D/O.LATE C.V.RAMACHANDRAN NAIR,
RESIDING AT T.C. 27/991 (3), MEENAKSHY,
VANCHIYOOR P.O., THIRUVANANTHAPURAM AND PROPRIETRIX,
M/S.RADHAKRISHNAN & BROTHERS, KILIMANOOR,
THIRUVANANTHAPURAM.

BY ADVS.SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN

RESPONDENT(S):

1. D.RADHAKRISHNAN (DIED)
S/O.LATE DAMODHARAN, RITA BHAVAN, TC 11/2050,
R.K.V.ROAD, KOWDIAR P.O., THIRUVANANTHAPURAM.
2. DR.D.RETNAKUMAR
S/O.LATE DAMODHARAN, RESIDING AT -DO-
3. BHARAT PETROLEUM CORPORATION LTD,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT BHARAT BHAVAN,
BALLAD ESTATE, MUMBAI,
REPRESENTED BY ITS MANAGING DIRECTOR.
4. TERRITORY MANAGER (RETAIL) BHARAT PETROLEUM
CORPORATION LTD, TERRITORY (RETAIL) OFFICE,
IRUMPANAM P.O., COCHIN.
5. SALES OFFICER,
BHARAT PETROLEUM CORPORATION LTD., KOLLAM.

PJ

.....2/-

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6. R.SAROJINI,
W/O.LATE DAMODHARAN, RESIDING AT RITA BHAVAN,
T.C. 11/2050, R.K.V.ROAD, KOWDIAR P.O.,
THIRUVANANTHAPURAM.

R2 & 6 BY ADVS. SRI.M.R.SUDHEENDRAN
SMT.A.AFREEZAA KHAN
SRI.D.N.KRISHNAN NAIR
R3,4,5 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 05-08-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE PLAINT IN O.S.NO.120/2002

EXT.P-2: TRUE COPY OF THE WRITTEN STATEMENT

EXT.P-3: TRUE COPY OF THE ORDER IN C.R.P NO.712/07

EXT.P-4: TRUE COPY OF THE ORDER DATED 20.12.2008

EXT.P-5: TRUE COPY OF THE ORDER IN CRP NO.66/09

EXT.P-6: TRUE COPY OF THE ORDER DATED 12.11.09

EXT.P-7: THE CERTIFIED COPY OF THE ORDER DATED 8.12.2014

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

[CR]

B.KEMAL PASHA, J.

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O.P.(C).No.511 of 2015

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Dated this the 5th day of August, 2015

J U D G M E N T

O.S.No.120 of 2002 was instituted before the Principal Munsiff's Court, Thiruvananthapuram by presenting Exhibit P1 plaint. The relief sought for in Exhibit P1 plaint are the following:

“A) To pass a decree declaring that the plaintiff is entitled to continue claim and inherit all businesses or/and privileges being run or held by M/s.Radhakrishnan and Brothers, Kilimanoor and the father of the plaintiff the late C.V.Ramachandran Nair who was residing at Meenakshy, T.C.27/991(3), Vanchiyoor, Thiruvananthapuram after his death on 18.10.2001;

B) To pass a decree of perpetual injunction restraining the defendants 3 to 5 from taking any actions to take over the business of petroleum dealership business being operated by the plaintiff in the name and style M/s.Radhakrishnan and Brothers, Kilimanoor in the plaint

schedule premises until her rightful claim over the dealership licence is finally determined by the 3rd defendant as per rules and practice and further restraining the defendants 1 and 2 from causing any disturbance to the above said business being run by the plaintiff in the name and style M/s.Radhakrishnan and Brothers.

C) To allow any other relief which is deemed just and equitable by this Honourable Court and which is being prayed for hereafter by the plaintiff.

D) To allow all cost to the plaintiff.”

2. The respondents contended that by contract between the parties, the jurisdiction to entertain the suit has been limited to the courts at Cochin only. At the same time, it seems that no such contract was entered into between the parties, and the respondents could not produce any such contract before the court below. Instead of that, they had produced some subsequent agreement forms with them to show that in similar cases their contracts with the parties had limited the jurisdiction to the courts at Cochin only. Therefore, it is evident that the respondents could not prove before the court below that the jurisdiction is limited by the contract of parties, to the courts at Cochin only.

3. The court below has taken the view that the property in which the petrol bunk is functioning, is situated at Kilimanoor, within the jurisdiction of the Munsiff's Court, Attingal and therefore, the suit should have been filed before the Munsiff's Court, Attingal. On that ground, the plaintiff was directed to file an application under Order VII Rule 10A CPC., before the court below, through Exhibit P6 order. The said order was challenged through C.M.A.No.12 of 2010 before the District Court, Thiruvananthapuram. The learned II Additional District Judge also has concurred with the view taken by the court below, and found that the plaint should have been returned to the plaintiff for presentation before Munsiff's court, Attingal, through Exhibit P7 judgment. The same is under challenge.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. The aforesaid relief sought for in Exhibit P1 plaint clearly reveal that the execution of the decree that may be passed in terms of the plaint is entirely possible through

personal obedience within the meaning of the proviso to Section 16 CPC. It seems that, it is not a suit relating to immovable property. The title or possession over the immovable property is not in question.

6. The learned counsel for the petitioner has invited the attention of this Court to the decision in ***Harshad Chiman Lal Modi v. DLF Universal Ltd. and another*** [(2005) 7 Supreme Court Cases 791]; wherein it was held in paragraph 18 that:

“The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant.”

7. It seems that the case in hand will fall within the scope of the proviso to Section 16 CPC and it is evident that the relief sought for could entirely be obtained by personal obedience of the defendants. In such case, the suit could be instituted either in the court within the local limits of

whose jurisdiction the property is situated, i.e., the Munsiff's Court, Attingal in this case, or in the court within the local limits of whose jurisdiction the defendants actually and voluntarily resides or carries own business, or personally works for gain. It is the admitted case that the contesting defendants, who are the respondents herein, are residing within the jurisdiction of the local limits of the Munsiff's Court, Thiruvananthapuram.

8. When the execution of the decree that may be passed in such a case is possible entirely through the personal obedience of the contesting defendants, the Munsiff's Court, Thiruvananthapuram has jurisdiction to entertain the suit in question. Matters being so, Exhibits P6 order as well as Exhibit P7 judgment passed by both the court below are liable to be set aside.

In the result, this Original Petition (Civil) is allowed and Exhibits P6 and P7 stand set aside. It is found that the Munsiff's Court, Thiruvananthapuram has jurisdiction to entertain the suit. This is a suit of 2002. The court below,

where the suit is presently pending, shall dispose of the suit as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/5/8/15