

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

OP(C).No. 546 of 2015 (O)

(CMA.NO. 126/2014 OF III ADDL. DISTRICT & SESSIONS COURT, THRISSUR)

(IA.NO. 11317/2014 IN O.S.NO.3656/2014 OF II ADDL.MUNSIFF COURT, THRISSUR)

PETITIONER(S):

- 1. BALAKRISHNAN, AGED 67 YEARS,
S/O.PUTHENPURAKKAL KOCHUNNY,
KOTTAPURAM DESOM,THRISSUR VILLAGE, DISTRICT, TALUK.**
- 2. SULOCHANA, W/O.BALAKRISHNAN, AGED 64 YEARS,
KOTTAPURAM DESOM,THRISSUR VILLAGE, DISTRICT, TALUK.**

BY ADV. SRI.V.BINOY RAM

RESPONDENT(S):

- 1. VIJAYAN, AGED 65 YEARS,
S/O.PUTHENPURAKKAL KOCHUNNY, KOTTAPURAM DESOM,
THRISSUR VILLAGE, DISTRICT, TALUK, PIN-680 020.**
- 2. MANI, W/O.PUTHENPURAKKAL MADHAVAN,
KOTTAPURAM DESOM, THRISSUR VILLAGE, DISTRICT,
TALUK, PIN-680 020.**
- 3. SASI, S/O.PUTHENPURAKKAL MADHAVAN,
KOTTAPURAM DESOM, THRISSUR VILLAGE, DISTRICT,
TALUK, PIN-680 020.**
- 4. SATHEESAN,S/O.PUTHENPURAKKAL MADHAVAN,
KOTTAPURAM DESOM, THRISSUR VILLAGE, DISTRICT, TALUK,
PIN-680 020.**
- 5. BINDU,D/O.PUTHENPURAKKAL MADHAVAN,
KOTTAPURAM DESOM,
THRISSUR VILLAGE, DISTRICT, TALUK,
PIN-680 020.**

BY ADV.SRI.P.K.SAJEEV (CAVEATOR)

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

sts

OP(C).No. 546 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE PLAINT IN 3656/2014 ON THE FILE OF IIND
ADDL.MUNSIFF COURT, THRISSUR.
- EXT.P2 - TRUE COPY OF THE PARTITION DEED NO.5626/1996 OF THRISSUR
SRO.
- EXT.P3 - TRUE COPY OF THE PETITION IN I.A.11317/2014 IN EXHIBIT P1.
- EXT.P4 - TRUE COPY OF THE OBJECTION IN EXHIBIT P3.
- EXT.P5 - TRUE COPY OF THE COMMISSION REPORT IN I.A.11316/2014
- EXT.P6 - TRUE COPY OF THE ORDER IN I.A.11317/2014 OF THE IIND
ADDL.MUNSIFF COURT THRISSUR DATED 10-7-2014
- EXT.P7 - TRUE COPY OF THE ORDER DATED 20-12-2014 IN CMA 126/2014 OF
IIND ADDL. DISTRICT COURT, THRISSUR.
- EXT.P8 - TRUE COPY OF THE AFFIDAVIT DATED 17-2-2015 FILED BY THE
RESPONDENTS

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

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P. BHAVADASAN, J.

O.P.(C). No. 546 of 2015

Dated this the 2nd day of March, 2015.

JUDGMENT

Aggrieved by Ext.P7 order passed by the District Court, Thrissur in C.M.A. 126 of 2014, the plaintiffs before the court below have come up with this Original Petition under Article 227 of the Constitution of India.

2. O.S. 3656 of 2014 was instituted before the Munsiff's Court, Thrissur praying for a permanent prohibitory injunction restraining the defendants in the suit from polluting B schedule well and also from erecting concrete pillars on the side of the well and also for mandatory injunction directing the defendants to clean the well and to restore the boundary wall of the well.

3. Along with the suit the plaintiffs had moved I.A. 11317 of 2014 before the court below. The court below granted the interim order as prayed for. Aggrieved by the

same, the defendants carried the matter in appeal as C.M.A. 126 of 2014. The appellate court, after evaluating the materials before it, held that it is unjust and improper to restrain the appellants before the lower appellate court from carrying on construction as adequate safeguards could be provided to protect the interests of the plaintiffs in the suit. Accordingly, the C.M.A. was disposed of imposing several stringent conditions on the defendants and asking the defendants to file an affidavit before the trial court within fifteen days if they are agreeable to the conditions imposed by the lower appellate court.

4. It is the said order that is assailed in this Original Petition.

5. After having heard learned counsel for the petitioners and the respondents, this Court finds almost no grounds to interfere with the order of the court below. The lower appellate court has adopted a practical approach to the problems and to a great extent salvaged the grievances

of both the parties. It is significant to notice that in the partition, property was divided into four portions and each sharer has got little over 1 cent. The common well was located in the property belonging to the first respondent herein and he had the obligation to provide water to all the persons. When he attempted to put up a building in his property, trouble started and the lower appellate court has noticed all the aspects and has found that by imposing certain conditions, the interests of both parties can be safeguarded. Accordingly, the following conditions were imposed:

“Appellant shall take steps to clean and purify the well and water. And thereafter the well mouth shall be temporarily closed to preserve water and to avoid any further contamination during construction.

The construction now started by the appellant shall be completed within 6 (six) months, immediately after the construction the appellant shall make it sure to the satisfaction of the respondents that the water is pure and further the appellant shall fix motor pump-set of the respondents and provide water to the

respondents as agreed upon in the partition deed.

During the period of construction, the appellants shall supply water to the respondents, according to their requirements in those days and if the respondents prove before the trial court that their requirement for water is not properly and sufficiently met by the appellant, the injunction order granted by the trial court will be automatically revived.

It is made clear that the appellant shall bear the cost of supplying water to the respondents during the period of construction in the C schedule property and construction in the C schedule property must be in accordance with the plan approved by the local body. At any cost, the well mouth shall not be closed permanently in its entirety, half portion of the well mouth shall be kept open as seen in the plan.”

6. One fails to understand how the petitioners before this Court can be aggrieved by the order of the court below. The court has made adequate safeguards and has also ensured that none of the rights of the petitioner is affected either currently or in future. In fact during the tenure in which the construction is going on, the lower appellate court has directed that water as is necessary for

the petitioners shall be provided at the expense of the first respondent herein. The first respondent has filed an affidavit accepting that condition also. Merely because motor cannot be installed now, it cannot mean that the right of the petitioners is affected which has otherwise been safeguarded as could be seen from the order of the court below. There is no real grievance for the petitioners and it is only imaginary that the first respondent may not supply sufficient water. There is nothing which prevents the petitioners from insisting for any quantity of water provided water is available in the well.

There is no merit in this Original Petition. It is dismissed.

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P. BHAVADASAN,
JUDGE