

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

OP(C).No. 664 of 2015 (O)

(Against the order dtd.25.02.2015 in I.A.654/2015 in I.A.59/2015 in
OS 973/2013 of 1st ADDL.MUNSIFF COURT,ERNAKULAM)

PETITIONER:

T.V. FRANCIS, AGED 47 YEARS
S/O.VARUTHUKUTTY, THOTTUNGAL HOUSE, KOVILVATTOM DESOM,
ERNAKULAM VILLAGE, KANAYANNUR TALUK.

BY ADVS.SRI.JOHNSON ABRAHAM
SRI.K.J.VINCENT PIOUS
SRI.S.GOPINATHAN
SRI.NELSON ABRAHAM

RESPONDENTS:

1. SEBASTIAN ROZARIO, AGED 51 YEARS
S/O.MARIAN ROZARIO, KANNACHAKKANATTU HOUSE
PALLURUTHI P.O., 682006, EDAKOCHI DESOM
EDAKOCHI VILLAGE, KOCHI TALUK.

2. SAHADEVAN, S/O.KUMARAN, AGED 54 YEARS
CHAKKATHUKADU HOUSE, SAGARI, PARUT P.O.
682 332, PARUR MURI, MANAKUNNAM VILLAGE
KANAYANNUR TALUK.

R2 BY ADV. SRI.C.K.GOVINDAN
R2 BY ADV. SRI.L.P.ARAVINDAKSHAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- P1- (THE TRUE COPY OF THE CERTIFIED COPY OF THE SALE DEED NO. 75/2004 SRO, ERNAKULAM).
- P2- (THE TRUE PHOTO COPY OF THE CERTIFIED COPY OF THE SALE DEED NO. 2506/1983 SRO, ERNAKULAM).
- P3- (THE TRUE COPY OF THE COMMISSION REPORT WITH SKETCH DATED 19.12.2012 FILED BY THE COMMISSIONER).
- P4- (THE TRUE PHOTO COPY OF THE SAID MODIFICATION PETITION IA NO.59/2015).
- P5- (TRUE COPY OF PETITION I.A.NO.654/2015 TO REVIEW THE ORDER AND TO PERMIT THE PLAINTIFF TO FILE THE COUNTER AFFIDAVIT AND TO RE-HEAR THE MATTER ON MERIT).
- P6- (THE TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN I.A.NO.59/2015 BY THE PETITIONER).
- P7- (THE COPY OF THE CARBON COPY OF THE ORDER OF DISMISSAL OF PETITION NO. 654/2015).
- P8- COPY OF THE ORDER IN I.A.59/15 IN O.S.973/13 DTD.13.1.15 OF 1ST ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.
- P9- COPY OF PLAINT IN O.S.973/2012 BEFORE 1ST ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.
- P10- COPY OF WRITTEN STATEMENT FILED BY 2ND DEFENDANT IN O.S.973/12 BEFORE 1ST ADDITIONAL MUNSIFF'S COURT, ERNAKULAM.
- P11- COPY OF SALE DEED No.5638/1995 SRO, ERNAKULAM OF PLAINTIFF.

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.664 OF 2015

Dated this the 9th day of April, 2015.

J U D G M E N T

This original petition is directed against Ext.P7 order dated 25.02.2015 in I.A.No.654/2015 in I.A.No.59/2015 in O.S.No.973/2013 passed by the 1st Additional Munsiff Court, Ernakulam.

2. By Ext.P7 order, the review petition filed by the petitioner was dismissed and by Ext.P8 order in I.A.No.59/2015, court below has directed not to make obstruction to the Kerala Water Authority carrying out repairs to the existing pipe line which runs through the plaint B schedule pathway.

3. The dispute in this case relates to plaint B schedule pathway. The plaintiff who is the petitioner before this Court would contend that the defendants in the suit have no right to use the pathway and the pathway is for his exclusive use. It is also contended that the property of the defendants in the suit abuts a road.

4. It appears that the defendants resisted the suit by making a claim over plaint B schedule pathway. However, in I.A.No.7481/2012 filed by the plaintiff in the suit, the defendants were restrained from making any construction or causing any obstruction to the pathway. While that order was pending, 2nd defendant moved I.A.No.59/2015 seeking modification of the order in I.A.No.7481/2012 on the ground that the pipeline which is running through the plaint B schedule pathway has been damaged and that affects the water supply to the building and when the Water Authority was approached, they informed the 2nd defendant who is the petitioner in I.A.No.59/2015 that since there is an order of injunction from the court, unless the court grants permission, they cannot carry out repairs.

5. The court below, after noticing that no counter affidavit has been filed by the petitioner before this Court, allowed I.A.No.59/2015 by Ext.P8 order as follows:

"7. As it is revealed from the affidavit of the petitioner, against which no objection is filed by respondent/plaintiff that the pipe line leading to the plaint D schedule property of the petitioner through plaint B schedule way is obstructed, and that

respondent/plaintiff owing to the interim injunction order in I.A.7481/2012 is not permitting the Kerala Water Authority personnels to repair the same, I find that for the limited purpose of enabling repair of water line, plaintiff/respondent is to be directed not to obstruct the Kerala Water Authority personnels from carrying out any repair to the Water line if any passing through the plaint B schedule way to the plaint D schedule property.

8. The direction above granted will not ensue to the benefit of the petitioner in the suit and is only an interim measurement to meet the exigency arisen on obstruction in the alleged water line.

9. However, the petitioner prior to carrying out the repairs by Kerala Water Authority is to take out a commission in whose presence, the repair work is to be conducted. Commission to ensure that work is carried out causing any inconvenience or obstruction for the persons using the plaint B schedule way as well as that the repair is completed expeditiously and during the timing convenient for the parties using the plaint B schedule way”.

The review petition filed by the petitioner was dismissed by Ext.P7 order.

6. Learned counsel appearing for the petitioner contended that in fact there is no pipeline running through the plaint B

schedule pathway and it is only an attempt to create a new right that I.A.No.59/2015 was filed by the 2nd defendant in the suit. If at all the petitioner in I.A.No.59/2015 wants to have water supply, he could directly take a connection from the main road which abuts his property.

7. Learned counsel appearing for the respondents, on the other hand, contended that there is a pipeline running through plaint B schedule pathway, repairs of which was sought for and that alone was granted by the court below.

8. There seems to be considerable controversy regarding the existence of pipeline itself to the disputed pathway. The petitioner before this Court disputes the very existence of the pipeline and contends that this is an attempt by the respondents to draw a new pipeline through plaint B schedule pathway. However, the court below has directed that the work be carried out in the presence of a Commissioner. It is necessary that the Commissioner will have to ascertain as to whether there is a pipeline as claimed by the petitioner in I.A.No.59/2015 in existence at all and then only the question of repairing will arise.

If there is no pipeline, then there is no question of any repairs being carried out.

This original petition is disposed of directing the Commissioner to ascertain whether a pipeline as claimed by the petitioner in I.A.No.59/2015 does exist and repairs are necessary as claimed by the respondents herein and only thereafter the order of the court below will be given effect to.

Sd/-

P.BHAVADASAN
JUDGE

smp