

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

OP(C).No. 712 of 2015 (O)

(I.A.NO.1626/2014 IN OS.NO.169/2014 OF ADDL.DISTRICT COURT, PALAKKAD)

PETITIONER:

VIVEKANDAN,
S/O.DHARMANDI, AGED 61 YEARS,
KARADATHODI, OOTARA,
VADAVANNOOR, CHITTUR, PALAKKAD.

BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF
SRI.T.U.SUJITH KUMAR
SRI. ANU JACOB

RESPONDENT :

SANTHAKUMARAN,
S/O.DHARMANDI, AGED 63 YEARS, R.R RICE MILL,
OOTARA,VADAVANNOOR, CHITTUR, PALAKKAD-678 101

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF THE JUDGMENT IN ORIGINAL SUIT NUMBER 279/2006 DTD MARCH 31, 2010 OF THE COURT OF THE MUNSIF OF CHITTUR.
- P2:- A TRUE COPY OF EXECUTION PETITION NUMBER 109/2012 OF THE COURT OF THE MUNSIF OF CHITTUR
- P3:- A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER IN EXECUTION PETITION NUMBER 109/2012 OF THE COURT OF THE MUNSIF OF CHITTUR
- P4:- A TRUE COPY OF THE ADDITIONAL COUNTER STATEMENT FILED BY THE PETITIONER IN EXECUTION PETITION NUMBER 109/2012 OF THE COURT OF THE MUNSIF OF CHITTUR
- P5:- A TRUE COPY OF EXECUTION PETITION NUMBER 130/2012 OF THE COURT OF THE MUNSIF OF CHITTUR
- P6:- A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER IN EXECUTION PETITION NUMBER 130/2012 OF THE COURT OF THE MUNSIF OF CHITTUR
- P7:- A TRUE COPY OF THE ADDITIONAL COUNTER STATEMENT FILED BY THE PETITIONER IN EXECUTION PETITION NUMBER 130/2012 OF THE COURT OF THE MUNSIF OF CHITTUR
- P8:- A TRUE COPY OF EXECUTION PETITION NUMBER 138/2011 OF THE COURT OF THE MUNSIF OF CHITTUR
- P9:- A TRUE COPY OF ALLEGATIONS IN EXT P8 FILING COUNTER STATEMENT
- P10:- A TRUE COPY OF ALLEGATIONS IN EXT P8 FILING ADDITIONAL COUNTER STATEMENT
- P11:- A TRUE COPY OF THE MEMORANDUM OF APPEAL IN APPEAL SUIT NUMBER 169/2014 OF THE COURT OF THE DISTRICT JUDGE OF PALAKKAD
- P12:- A TRUE COPY OF THE STAY PETITION ACCOMPANYING EXT P11 APPEAL

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.HARIPRASAD, J.

O.P.(C).No.712 of 2015

Dated this the 17th day of March, 2015

J U D G M E N T

Petitioner is the defendant in O.S.No.279 of 2006 on the file of the Court of Munsiff, Chittur. The suit is one for prohibitory injunction. Ext.P1 is the judgment in the suit whereby the following decree is passed:

"In the result, suit is hereby decreed as follows:-

a) That the defendants and their men are hereby restrained by a permanent prohibitory injunction from causing any obstruction or hindrance to the plaintiff in flowing out the water from the plaint A schedule property and the mill situated therein through the plaint B schedule water chal and further not to cause any material alteration or damages to the plaint B schedule water chal.

b) That the parties shall suffer their respective costs."

2. Heard the learned counsel for the petitioner.

3. Learned counsel submitted that an appeal has been preferred against Ext.P1, which is pending before the lower appellate court. The grievance of the petitioner is that in spite of moving for stay of execution of the decree in O.S. No.279 of 2006 (Ext.P1) by I.A.No.1626 of 2014, the lower appellate court has not passed any order.

In the meantime, the decree holder/plaintiff has taken steps to execute the decree. The petitioner urges only for consideration of the stay petition by the lower appellate court on an early date so that the right to proceed with the execution can be determined in that proceeding.

4. After hearing the learned counsel for the petitioner and also on perusal of the records, I am of the view that O.P.(C) itself can be disposed of with the following direction:

The III Additional District Judge, Palakkad before whom A.S.No.169 of 2014 is pending, shall dispose of I.A.No.1626 of 2014 in that appeal on an early date, at any rate within a period of three months from today on merits. The execution proceedings taken pursuant to Ext.P1 judgment and decree shall be stayed for a period of three months.

The Original Petition is disposed of with the above direction.

Sd/-
A.HARIPRASAD, JUDGE.