

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. 726 of 2015 (O)

AGAINST THE ORDER IN O.S.NO. 641/2014 of MUNSIFF COURT-I, KOZHIKODE

PETITIONER(S):

INDIAN OIL CORPORATION LTD., DIVISIONAL OFFICE, 2ND FLOOR,
P.K.K.TOWER, ERANHIPALAM, P.O.CIVIL STATION, KOZHIKODE,
REPRESENTED BY ITS MANAGER (LAW), SANJAI PADIYATH,
INDIAN OIL CORPORATION LIMITED, KERALA STATE OFFICE,
PANAMPILLY NAGAR P.O., COCHIN-682036.

BY ADVS.SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.N.K.SUBRAMANIAN
SMT.B.BINDU

RESPONDENT(S):

AMEER ALI, AGED 54 YEARS, SON OF SRI KUNHAHAMMED,,
'NOORAS' P.O.ATHOLI, KOLAKKAD AMSOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

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

OP(C) NO.726/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PLAINT IN OS NO.641/2014 FILED BY THE RESPONDENT
BEFORE THE COURT OF THE MUNSIFF, KOZHIKODE

EXT.P2 TRUE COPY OF WRITTEN STATEMENT FILED BY THE PETITIONER IN EXT.P1 SUIT
DATED 9.8.2014

EXT.P3 TRUE COPY OF IA NO.1025 OF 2015 FILED IN EXT.P1 SUIT

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

A.HARIPRASAD, J.

O.P.(C) No.726 of 2015

Dated this the 17th day of March, 2015

JUDGMENT

Petition under Article 227 of the Constitution of India. The defendant in O.S.No.641 of 2014 before the Court of Munsiff, Kozhikode is the petitioner. Ext.P1 is the copy of plaint. The suit is one for recovery of possession of plaint schedule property from the possession of the defendant. Admittedly, in the property a petrol bunk is functioning. The bone of contention is that the petitioner is entitled to run the petrol bunk in the premises for a period of fifteen years and the period of lease will expire only on 04.07.2018.

2. Heard the learned counsel for the petitioner.

3. From the facts and circumstances revealed from the pleadings, I am of the view that the matter can be disposed of without sending notice to the respondent. Learned counsel for the petitioner submitted that the respondent/plaintiff is an assignee from the original lessor and during the first round of litigation between the petitioner and the original lessor, the right of company to run the petrol bunk for stipulated period was considered and approved. It is also submitted that the respondent/plaintiff purchased the property during the pendency of the

second appeal and he has initiated a fresh legal action. The matter in issue in the present suit is the issue which was directly and substantially in issue in the earlier suit. It is also submitted that a petition filed by the plaintiff to review the judgment in the second appeal is pending. In this back drop, the petitioner filed a petition under Section 10 CPC to stay the proceedings. The court below dismissed the application. Grievance of the petitioner is that even before getting a copy of the order passed in the petition filed under Section 10 CPC, the trial court is taking steps to start trial of the suit. Considering the facts and circumstances, the original petition is disposed with the following directions.

Learned Munsiff-I, Kozhikode is directed to issue a carbon copy of the order in I.A.No.1025 of 2015 in O.S.No.641 of 2014 within a period of one week from the date of production of this judgment. It is also directed that the suit shall not be taken up for trial for a period of one week after issuance of the carbon copy of the order.

A. HARIPRASAD, JUDGE.

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