

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP(C).No. 786 of 2015 (O)

CMA 13/2014 of SUB COURT, OTTAPPALAM, DATED 20-12-2014

PETITIONER(S):

**ABU M.K, S/O. MAMMOOTTY,
MUNDAKKOTTIL, KUMARAMBATHOOR VILLAGE
MANNARKKAD TALUK, PALAKKAD DISTRICT.**

BY ADV. SRI.P.JAYARAM

RESPONDENT(S):

**HAMZA A,
S/O. KUNHALAVI, AMBADATH HOUSE
NEAR NERIYAMBADAM JUMA MASGITH, UMMANAZHI PO,
PULAPATTA, OTTAPPALAM TALUK, PALAKKAD DISTRICT,
PIN-678632.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 23-03-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

OP(C).No. 786 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE PLAINT IN OS NO.497/2013, ON THE FILE OF MUNSIF COURT, OTTAPPALAM
- EXHIBIT P2:** TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY RESPONDENT/DEFENDANT IN OS NO.497/2013, ON THE FILES OF MUNSIF COURT, OTTAPALLAM
- EXHIBIT P3:** TRUE COPY OF IA NO.3638/2013, OS NO.497/2013, ON THE FILE OF MUNSIF COURT, OTTAPPALAM
- EXHIBIT P4:** TRUE COPY OF THE COUNTER AFFIDAVIT IN IA NO.3638/2013, OS NO.497/2013, ON THE FILES OF MUNSIF COURT, OTTAPPALAM
- EXHIBIT P5:** TRUE COPY OF THE ORDER DATED 17.2.2014 IN IA NO.3638/2013, OS NO. 497/2013, ON THE FILES OF MUNSIF COURT, OTTAPPALAM
- EXHIBIT P6:** TRUE COPY OF THE ORDER DATED 20.12.2014 IN CMA NO, 13/2014, ON THE FILES OF SUB COURT, OTTAPALAM.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P. BHAVADASAN, J.

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O.P.(C) No.786 OF 2015

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Dated this the 23rd day of March, 2015

JUDGMENT

Undeterred by the concurrent findings against him, the plaintiff in O.S.No.497 of 2013 pending before the Munsiff Court, Ottappalam has come up with this original petition under Article 227 of the Constitution of India. He assails the findings of the lower court as well as the lower appellate court in dismissing the I.A. for temporary injunction.

2. The property admittedly belonged to the wife of the respondent herein and there were litigations between the husband and wife pending before the Family Court. The respondent herein had obtained an interim order of injunction restraining alienation of property which is the subject matter of litigation before the Family Court.

3. The plaintiff claims that without knowing the order of the Family Court, he being a bona fide purchaser of property, from the wife of the defendant, is entitled to possession. He,

therefore, filed the suit for injunction and filed I.A. No.3638/2013 for temporary injunction.

4. In the suit before the court below, the respondent entered appearance and contested the matter. The injunction petition was dismissed. An appeal filed as C.M.A. No.13/2014 was also dismissed by the lower appellate court.

5. The learned counsel appearing for the petitioner submits that the finding of the court below that the petitioner was aware that the defendant had approached the Family Court and obtained an order against his wife is not correct. It is also contended on behalf of the petitioner that the petitioner was unaware of the order of injunction and therefore, he being a bona fide purchaser, was entitled to safeguard his possession.

6. Even though there may appear to be some substance in the contentions raised, on a closer scrutiny, it can be seen that there is absolutely no merit in the contentions. There was an order of injunction restraining the wife of the defendant from alienating the property and order was issued and received before the alienation on the basis of which the petitioner lays claim over

the property. Alienation violating an order of injunction cannot be recognized and action based on such a deed cannot be supported. Both the courts below also found from the pleadings and materials that the petitioner was aware of the litigation between the defendant and his wife. There is no law or equity in favour of the petitioner entitling him for the interim order as prayed for. The courts below were perfectly justified in declining the relief of temporary injunction. There is no merit in the original petition and it is dismissed.

Sd/-
P. BHAVADASAN,
JUDGE.

//true copy//

P.S. to Judge

St/-