

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

OP(C).No. 956 of 2015 (O)

AS 50/2012 of ADDLDISTRICT COURT,NORTH PARAVUR
REMUMBERED AS A.S. NO. 15/2014, ADDL. SUB COURT, PARRVUR.

PETITIONER(S):

1. SREEKALA, AGED 44 YEARS,
W/O. O.A. RADHAKRISHNAN,
ODASSERIL HOUSE, CHETTIKKAD MURI,
MOOTHAKUNNAM VILLAGE, PARAVUR TALUK,
PIN - 683 516.
2. O.A. RADHAKRISHNAN, AGED 48 YEARS,
S/O. APPUKUTTAN, K.S.F.E. MANAGER,
ODASSERIL HOUSE, CHETTIKKAD MURI,
MOOTHAMUNNAM VILLAGE, PARAVUR TALUK,
PIN - 683 516.

BY ADVS.SRI.DINESH R.SHENOY
SMT.K.K.JYOTHILAKSHMY
SRI.SANIL JOSE

RESPONDENT(S):

1. ANTONY, AGED 65 YEARS, S/O. PIUS,
KALATHIL HOUSE, HETTIKKADU KARA,
MOOTHAKUNNAM VILLAGE, PARAVUR TALUK,
PIN - 683 516.
2. BIJU ANTONY, AGED 40 YEARS,
S/O.ANTONY,
ODASSERIL HOUSE, CHETTIKKAD MURI,
MOOTHAMUNNAM VILLAGE, PARAVUR TALUK,
PIN - 683 516.
3. POULI, AGED 57 YEARS, S/O. ANTONY,
ODASSERIL HOUSE, CHETTIKKAD MURI,
MOOTHAMUNNAM VILLAGE, PARAVUR TALUK,
PIN - 683 516.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

O.P.C. 956/2015.

APPENDIX

PETITIONERS' EXTS:

EXT. P1 : TRUE PHOTOCOPY OF REPORT OF ADV. M.T. PHILOMINA DAGTED 16.2.2008 IN I.A. NO. 81/2008 IN O.S. NO 12/2008, MUNSIFF COURT, NORTH PARAVUR.

EXT. P2 : TRUE PHOTOCOPY OF JUDGMENT DATED 30.1.2012 IN O.S. 12/2008, MUNSIFF COURT, NORTH PARAVUR.

EXT. P3 : TRUE PHOTOCOPY OF THE APPEAL MEMORANDUM IN A.S. NO. 50/2012, ADDL. DISTRICT COURT, NORTH PARAVUR.

EXT. P4 : TRUE PHOTOCOPY OF I.A. NO. 692/2015 IN A.S. O. 15/2014, ADDL. SUB COURT, NORTH PARAVUR.

P. BHAVADASAN, J.

O.P.(C). No. 956 of 2015

Dated this the 1st day of April, 2015.

JUDGMENT

In this Original Petition under Article 227 of the Constitution of India, the limited relief sought for are as follows:

- "a) Grant an order directing the Addl. Sub Court, North Paravur to expedite the issue of certified copy of the judgment and decree in A.S. No. 15/2014 on its file to the petitioners as expeditiously as possible.
- b) Grant an order restraining the defendants from trespassing upon the plaint schedule property or altering the nature and lie of the disputed pathway or trying to cut open or create a pucca pathway in any manner, whatsoever."

2. The petitioners are the plaintiffs in O.S. 12 of 2008 on the file of the Munsiff's Court, North Paravur. They filed the suit for declaration of title and permanent prohibitory injunction in respect of 10.31 Ares of land comprised in various survey numbers.

3. The defendants entered appearance and filed a counter claim. A commission was taken out in the suit and the Commissioner filed a report and plan. The suit was decreed by the trial court and counter claim was dismissed. It is pointed out that an appeal was filed against the decree in the suit and there is no appeal against the dismissal of the counter claim. Even though the appeal was opposed by the plaintiffs by pointing out that it is barred by res judicata, the appeal was allowed and the finding of the trial court was reversed.

4. The petitioners would point out that they have timely applied for certified copy of the judgment and decree for taking steps in the matter. Since there was an order of status quo throughout the appeal and in the suit, they moved the lower appellate court for injunction, till they took

appropriate steps in the matter. It is submitted that the said application is posted to 15.6.2015. According to the petitioners, if in the meanwhile, the respondents before this Court take steps to have the pathway altered, that may cause irreparable loss and injury to the petitioners. They therefore, pray that the decree of the lower appellate court may be kept in abeyance till the certified copies are obtained.

5. After having heard learned counsel for the petitioners, it is felt that the request made is just and reasonable especially in the light of the facts stated by the petitioners regarding the non-appealing of the decree against the counter claim. Anyhow, that is a matter to be decided in appropriate proceedings.

In the result, this Original Petition is disposed of directing that the interim order passed by the lower

appellate court at the time of admitting the appeal shall continue in force for one week after getting the certified copy of the judgment and decree of the lower appellate court.

sb.

P. BHAVADASAN,
JUDGE