

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

OP(C).No. 1109 of 2015 (O)

IA NO. 1879/2014 IN OS NO. 229/2013 of MUNSIFF COURT, NADAPURAM

PETITIONERS:

- 1. MOILOTH KADEESA, AGED 72 YEARS
W/O. ABDULLA, PUTHIYOTTIL HOUSE,
KUMMAMKODE AMSOM AND DESAM, VATAKARA TALUK,
KOZHIKODE DISTRICT.**
- 2. MOILOTH HAMEED, AGED 45 YEARS
S/O. ABDULLA, - DO -**
- 3. MOILOTH ASHRAF, AGED 43 YEARS
S/O. ABDULLA, - DO -**

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS:

- 1. KELOTH THAMASIUKUM KOICHIPARAMBATH MOIDU, AGED 59 YEARS
S/O KUNHISOOPY HAJI, BUSINESS, IYYAMKODE AMSOM,
KAKKATTIL DESAM, VATAKARA TALUK
KOZHIKODE - 673 504.**
- 2. KOMBIYULLATHIL THASHA KUNIYIL SUBAI, AGED 39 YEARS,
S/O. KUNJABDULLA HAJI, BUSINESS,
KUMMAMKODE AMSOM AND DESOM, VATAKARA TALUK
KOZHIKODE - 673 506.**
- 3. MOILOTH MOOSA, AGED 41 YEARS,
S/O. ABDULLA, KANNOLI HOUSE,
KUMMAMKODE AMSOM AND DESOM, VATAKARA TALUK,
KOZHIKODE - 673 506.**
- 4. SECRETARY,
NADAPURAM GRAMA PANCHAYATH, P.O. KALLACHI,
VATAKARA TALUK, KOZHIKODE - 673 506.**

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5. EXECUTIVE ENGINEER,
PHED, KERALA WATER AUTHORITY, VEERANCHERY
P.O. VATAKARA, VATAKARA TALUK, KOZHIKODE - 673 101.
6. EXECUTIVE ENGINEER,
PWD, PWD OFFICE, P.O. KUTTIADI,
VATAKARA TALUK, KOZHIKODE - 673 508.
7. THAHSILDAR,
VATAKARA TALUK, P.O.VATAKARA,
KOZHIKODE- 673 101.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24-04-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- | | |
|--------|---|
| EXT.P1 | TRUE COPY OF THE ORDER OF THE LSGI TRIBUNAL IN APPEAL NO. 391/2013 DATED 27.09.2013. |
| EXT.P2 | TRUE COPY OF THE PLAINT IN OS NO. 103/2012 BEFORE THE MUNSIFF COURT, NADAPURAM DATED 30.05.2012. |
| EXT.P3 | TRUE COPY OF THE WRITTEN STATEMENT IN OS NO. 103/2012 BEFORE THE MUNSIFF COURT, NADAPURAM DATED 05.09.2012. |
| EXT.P4 | TRUE COPY OF THE PLAINT IN OS NO. 229/2013 BEFORE THE MUNSIFF COURT, NADAPURAM DATED 28.11.2013. |
| EXT.P5 | TRUE COPY OF THE WRITTEN STATEMENT IN OS NO. 229/2013 BEFORE THE MUNSIFF COURT, NADAPURAM DATED 23.02.2014. |
| EXT.P6 | TRUE COPY OF THE IA NO. 1879/2014 IN OS NO. 229/2013 DATED 06.11.2014. |
| EXT.P7 | TRUE COPY OF THE ORDER IN I.A. NO. 1879/2014 IN O.S. NO. 229/13 OF THE MUNSIFF COURT, NADAPURAM DATED 30.01.2015. |

//TRUE COPY//

P.A. TO JUDGE

K. RAMAKRISHNAN, J.

O.P.(Civil) No.1109 of 2015

Dated this the 23rd day of March, 2016

JUDGMENT

The original petition was filed by the petitioners who are the defendants 1 to 3 in O.S.No.229/2013 on the file of the Munsiff Court, Nadapuram. The suit was filed by respondents 1 and 2 herein for a permanent prohibitory injunction restraining defendants 1 to 3 from constructing a building in the plaint schedule property on the allegation that it was being constructed in violation of the building rules. The suit was filed in a representative capacity under Order 1 Rule 8 of the Civil Procedure Code. They also filed an interlocutory application for injunction and publication was ordered and on the basis of publication, the 9th respondent herein filed I.A.No.1879/2014 to get himself impleaded in the suit and after hearing both sides, the court below allowed the application by impugned Ext.P7 order. According to the petitioners, Ext.P7 order is unsustainable

in law and without considering the objections raised by the petitioners that the order was passed. Further, the suit itself is not maintainable as the dispute herein has been considered by the Local Self Government Institutions and if they are aggrieved, they ought to have challenged the same before the appropriate authority. So they prayed for setting aside Ext.P7 order and also quash the proceedings in O.S.No.229/2013 on the file of the Munsiff Court, Nadapuram.

2. Since majority of the respondents have entered appearance in the review petition and they proposed to appear in these petitions also, notice to other non-appearing parties is dispensed with in the original petition as their interest is also protected by other respondents.

3. Sri.T.Krishnanunni, the Senior Counsel appearing for the petitioners submitted that 9th respondent cannot be said to be a person having same interest in the subject matter and as such, the impleading should not have been allowed. That can be allowed either under Order 1 Rule 8

or Order 1 Rule 10, not otherwise.

4. On the other hand, the learned counsel for the 9th respondent Sri.R.Parthasarathy, counsel representing Sri.B.Krishnan submitted that he is claiming fractional interest in the property setting up separate title as against petitioners and their predecessor. So he is an interested party in the proceedings.

5. The learned counsel for the 2nd respondent submitted that the 2nd respondent has no interest in the subject matter.

6. Heard counsel for the 3rd respondent Sri.M.Devesh and Smt.Madhu Ben, Government Pleader appearing for respondents 5 to 8. Notice to the first respondent in the review petition is served, but he did not appear and his interest is protected by other respondents. So notice to the first respondent is dispensed with.

7. The second relief claimed in the petition cannot be granted invoking Article 227 of the Constitution of India as the maintainability question has to be considered by the

court before which the case is now pending. So the second relief claimed in the petition cannot be granted.

8. As regards the first relief is concerned, the main challenge was that unless the party impleaded has got the same interest, he cannot be impleaded in the suit. It may be mentioned here that the suit was filed by the plaintiffs two in number claiming to have public interest and filed the suit for injunction restraining the defendants 1 to 3 therein from constructing the building in the plaint schedule property against the building rules encroaching into the property of Water Authority and other Government land. Whether there is encroachment or not is a matter to be considered in the suit. The 9th respondent has filed the application stating that he is also having interest in the litigation since the suit was filed under Order 1 Rule 8 of the Civil Procedure Code. Any person interested in the subject matter or having similar interest can approach the court in a suit filed under representative capacity and get himself impleaded. Even though he is not having interest in

the subject matter where the building is constructed, if there is any violation is pointed out, he can show the same and he can come on record as the law then stood. So under the circumstances, the court below allowing the application for impleadment of the 9th respondent herein cannot be said to be without any legal basis and so, that order does not call for any interference invoking the power under Article 226 of the Constitution of India.

8. The question regarding maintainability is not going to be affected on account of impleadment of the 9th respondent as well. The petitioners are at liberty to raise the question regarding maintainability of the suit and right of the plaintiffs or any of the persons who are supporting the plaintiff having locus standi to challenge the permit granted for construction are left open to be decided by the court before which the case is pending.

Considering the nature of dispute raised, this Court feels that a direction can be given to the court below to consider the question of maintainability of the suit as a

preliminary point if it is sought to be adjudicated by the contesting respondents, then court below is directed to consider the same and pass appropriate orders in that application as expeditiously as possible. With the above directions and observations, this petition is disposed of.

JV

sd/-
K. RAMAKRISHNAN
JUDGE