

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. 1112 of 2015 (O)

OS 148/2015 of MUNSIFF COURT, KANNUR

PETITIONER:

**SHALINI, AGED 50 YEARS,
D/O. ARAYAKKANDI KRISHNAN, MANDIYAN HOUSE,
NEAR ALAVIL KOVIL, CHIRAKKAL AMSOM, ALAVIL DESOM,
P.O.ALAVIL, KANNUR - 8.**

BY ADV. SRI. B.PREMNATH

RESPONDENT:

**K.T. SAJIR,
S/O.JABBAR, RESIDING AT K.T.HOUSE,
CHIRAKKAL AMSOM, PUZHATHI DESOM,
P.O.KATTAMBALLY, KANNUR,
THROUGH HIS POWER OF ATTORNEY HOLDER AND WIFE K.SAJINA,
KANIYIL HOUSE, PALLIKKUNNU AMSOM, CHALAD DESOM
P.O.CHALAD, KANNUR - 14.**

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

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P-1: TRUE COPY OF THE PLAINT IN O.S.NO. 148/2015 ON THE FILE OF THE HONOURABLE MUNSIF COURT, KANNUR DATED 16.03.2015.
- EXT. P-2: TRUE COPY OF THE PLAN OF THE COMMISSIONER IN THE FINAL DECREE I.A.NO. 2911/2009 IN O.S.NO. 64/2007 ON THE FILE OF THE ADDITIONAL MUNSIF COURT, KANNUR.
- EXT. P-3: TRUE COPY OF THE SALE DEED NO. 2742/2014 DATED 16.08.2014 RELATING TO PLAINT SCHEDULE PROPERTY IN FAVOUR OF THE RESPONDENT.
- EXT. P-4: TRUE COPY OF THE AFFIDAVIT AND PROPERTY SCHEDULE IN SUPPORT OF I.A.NO. 1070/2015 IN OS NO.148 OF 2015 DATED 16.3.2015.
- EXT. P-5: TRUE COPY OF THE TEMPORARY INJUNCTION ORDER DATED 19.03.2015 IN I.A.NO. 1070/2015 DATED 19.03.2015.
- EXT. P-6: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER TO I.A.NO. 1070/2015 DATED NIL.
- EXT. P-7: TRUE COPY OF THE RELEASE DEED NO.174/80 DATED 14.03.1980 EXECUTED BY SRI.LAXMANAN AND SRI.BHARATHAN IN FAVOUR OF LATE SRI. BHASKARAN.
- EXT. P-8: TRUE COPIES OF THE WRITTEN STATEMENT AND THE COUNTER CLAIM FILED BY THE PETITIONER IN O.S.NO. 148/2015 OF THE MUNSIF COURT, KANNUR DATED 28.03.2015.
- EXT. P-9: TRUE COPY OF I.A.NO. 1248 OF 2015 IN O.S.NO. 148/2015 DATED 28.03.2015 OF THE MUNSIF COURT, KANNUR.
- EXT. P-10: TRUE COPY OF THE ROUGH SKETCH SHOWING THE APPROXIMATE LIE OF PETITIONER'S PROPERTY AND THE RESPONDENT'S PROPERTY, IN A ROUGH MODIFICATION OF EXT.P2 PLAN.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

K.RAMAKRISHNAN, J

O.P.(C) No.1112 of 2015

Dated this the 24th day of April 2015

JUDGMENT

This is an application filed by the petitioner, who is the defendant in O.S. No.148 of 2015 seeking certain directions under Article 227 of the Constitution of India.

2. It is alleged in the petition that the respondent herein filed O.S. No.148 of 2015 before the Munsiff Court, Kannur for an injunction restraining the petitioner and her men from trespassing into the plaint schedule property and committing any act of waste and preventing her from constructing any compound wall. According to the petitioner, the description shown in the plaint schedule property does not tally with the description shown in

Ext.P3 title deed of the plaintiff. Ext.P5 ex-parte interim injunction was granted on 19.3.2015. The petitioner filed written statement and the counter claim to injunction contending that the description of the property is not proper and the attempt of the plaintiff is to grab the portion of the property of the petitioner. After hearing both sides, the lower court has posted the case for orders to 10.4.2015 and orders were not passed on that day and now it is posted to 21.5.2015. Taking advantage of the situation and also under the guise of Ext.P5 interim order, the respondent is attempting to trespass in the counter claim scheduled property and construct compound wall. The petitioner is unable to move the District Court, Thalassery as the application is now posted for orders after summer holidays. So the petitioner has no other remedy except to approach this court for the following reliefs:

- “(i) Call for the records with the case,
- (ii) Issue a temporary order restraining the respondent and his men from trespassing into Ext.P8 counter claim schedule

property and construct any compound wall or other structure therein or committing any acts of waste in it till orders are pronounced in I.A. 1248/2015 in OS. No.148/2015 on the file of the Munsiff's Court, Kannur.”

3. Considering the nature of reliefs claimed this petition, this court felt that this petition can be disposed of after hearing the learned counsel for the petitioner and dispensing with notice to the respondent.

4. The learned counsel for the petitioner submitted that since the injunction and counter injunction applications have been posted for orders, the petitioner cannot move the vacation court for any interim order. But, it may be mentioned here that the vacation court will be assuming the power of the normal court and if the parties apprehends any damage to the property in a pending matter, they can very well move the vacation court for getting interim order to protect the property from destruction or any change of character of the property. Since that remedy is available to the

petitioner, this court feels that it is not fit to invoke the power under Article 227 of the Constitution of India to grant the relief claimed in the petition. So this application can be disposed of as follows:

The petitioner is at liberty to move the vacation court for any interim order pending disposal of the interim injunction pending before the Munsiff Court, Kannur in O.S. No.148 of 20125 and if any such application is filed, the vacation court is directed to consider and pass appropriate interim orders in that application, after hearing the learned counsel for the respondent appearing in the matter, as it is pending before the Munsiff Court, Kannur.

With the above directions this O.P.(C) is disposed of.

Sd/-

**K.RAMAKRISHNAN, J,
JUDGE**

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