

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

OP(C).No. 1116 of 2015 (O)

O.S.NO.172 OF 2013 OF THE MUNSIFF COURT, ERATTUPETTA

PETITIONER(S) :

**DOMINIC @ JOHNY,
VARAVUKALAYIL HOUSE, POONJAR THEKKEKARA,
MEENACHIL TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.P.BABU KUMAR

RESPONDENT(S) :

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- 1. GEORGE, AGED 47 YEARS,
VARAVUKALAYIL HOUSE, POONJAR THEKKEKARA,
MEENACHIL TALUK, KOTTAYAM DISTRICT.**
 - 2. BIJI JOSEPH, AGED 50 YEARS,
S/O.JOSEPH, PLATHOTTATHIL HOUSE,
POONJAR THEKKEKARA P.O, PIN- 686 001.**
 - 3. ANCY, AGED 43 YEARS,
W/O.BIJI JOSEPH, PLATHOTTATHIL HOUSE,
POONJAR THEKKEKARA P.O, PIN- 686 001.**
 - 4. SUNIL JOSEPH, AGED 40 YEARS,
S/O.JOSEPH, PARAYIL HOUSE, POONJAR THEKKEKARA P.O.,
PIN- 686 001.**
 - 5. A.N.RAJAN, AGED 47 YEARS,
S/O.A.S.NARAYANAN, ANJANICKAL HOUSE, EDANADU P.O.,
VALLICHIRA VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.**
 - 6. MATHAYI C.JOBY, AGED 54 YEARS,
S/O.GEORGE, VARAVUKALAYIL HOUSE, ERATTUPETTA VILLAGE,
ARUVITHURA P.O., MEENACHIL TALUK.**

**R1 BY ADVS. SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH
R2,R3 & R5 BY ADV. SRI.LIJI.J.VADAKEDOM
R6 BY ADV. SRI.P.C.HARIDAS**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE PHOTOCOPY OF THE SETTLEMENT DEED NO.2740/1/05 OF POONJAR THEKKEKARA SRO EXECUTED BY THE FATHER OF THE PETITIONER AND 1ST RESPONDENT DATED 23.11.2005.
- EXT.P2: TRUE PHOTOCOPY OF THE ORDER DATED 22.11.2013 IN I.A.NO.295/2013 IN O.S.NO.87/2013.
- EXT.P3: TRUE PHOTOCOPY OF THE ORDER IN I.A.NO.685/2013 IN O.S.NO.172/2013 DATED 07.11.2013.
- EXT.P4: TRUE PHOTOCOPY OF THE COMPLAINT FILED BEFORE THE SUB DIVISIONAL MAGISTRATE DATED 28.01.2014.
- EXT.P5: TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER DATED 14.02.2014.
- EXT.P6: TRUE PHOTOCOPY OF THE ORDER OF THE SUB DIVISIONAL MAGISTRATE DATED 03.05.2014.
- EXT.P7: TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER DATED 26.05.2014.
- EXT.P8: TRUE PHOTOCOPY OF THE ORDER SDM DATED 28.05.2014.
- EXT.P9: TRUE PHOTOCOPY OF THE WRIT PETITION NO.8074/2014 FILED BY THE 2ND RESPONDENT BEFORE THE HON'BLE HIGH COURT OF KERALA DATED 19.03.2014.
- EXT.P10: TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C).NO.8074/2014 OF THE HON'BLE HIGH COURT OF KERALA DATED 26.05.2014.
- EXT.P11: TRUE PHOTOCOPY OF THE REPORT OF THE ADV.COMMISSIONER SUBMITTED BEFORE THE MUNSIFF COURT IN O.S.NO.172/2013 DATED 27.09.2013 AND DATED 25.06.2014.
- EXT.P12: TRUE PHOTOCOPY OF THE PHOTOGRAPH SHOWING THE PRESENT POSITION OF THE ROAD DATED NIL.
- EXT.P13: TRUE PHOTOCOPY OF THE MEDICAL CERTIFICATE ISSUED BY THE DOCTOR OF THE PETITIONER DATED 03.07.2014.
- EXT.P14: TRUE PHOTOCOPY OF THE INTERIM ORDER PASSED BY HON'BLE HIGH COURT IN O.P(CRL.)NO.136/2014 DATED.
- EXT.P15: TRUE PHOTOCOPY OF THE ORDER PASSED BY THE MUNSIFF'S COURT ERATTUPETTA IN O.S.NO.172/2014 IN I.A.NO.82/2015 DATED 10.04.2015.

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**EXT.P16: TRUE PHOTOCOPY OF THE AFFIDAVIT AND I.A FILED BEFORE
THE VACATION COURT, KOTTAYAM IN I.A.NO.477/2015
DATED 18.04.2015.**

**EXT.P17: TRUE PHOTOCOPY OF THE INJUNCTION ORDER PASSED BY
THE VACATION COURT, KOTTAYAM IN I.A.NO477/2015
DATED 18.04.2015.**

**EXT.P18: TRUE PHOTOCOPY OF THE AFFIDAVIT AND I.A FILED BEFORE
THE VACATION COURT, KOTTAYAM IN I.A.NO.514/2015
DATED 18.04.2015.**

**EXT.P19: TRUE PHOTOCOPY OF THE INJUNCTION ORDER PASSED BY
THE VACATION COURT, KOTTAYAM IN I.A.NO.514/2015
DATED 20.04.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

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O.P.(C) No.1116 of 2015
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Dated this the 16th day of July, 2015

J U D G M E N T

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An *ex-parte* interim order of injunction was passed in the suit. Still, the petitioner has not filed counter in respect of the IA. The present request is to direct the court below to dispose of the IA on merits. First of all, the petitioner has to file counter as against the IA and request the court below to dispose of the IA. In such case, the court below is duty bound to dispose of the IA under Order XXXIX Rule 3A. This O.P.(Civil) is too premature and hence, it is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/16/07

// True Copy //

PA to Judge