

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

OP(C).No. 1138 of 2015 (O)

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E.A. NO.122/2015 IN E.P. NO.50/2015 IN O.S. NO.577/2006 OF PRINCIPAL
MUNSIFF COURT, NEDUMANGAD.**

PETITIONER(S):

**SINDHU.S.,
D/O.SARASAMMA, T.C.48/1266/1,
ASWATHI BHAVAN, MOONNATTUMUKKU,
POONTHURA P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.AJITH KRISHNAN.

RESPONDENT(S):

**DEVAKI, D/O.KALLIPARA THANKAMMA,
ANAD MURI, PALOD VILLAGE,
NEDUMANGAD-695 541.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 20-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT-P1: TRUE COPY OF THE JUDGMENT DATED 24.02.2015 IN O.S.NO.577/2006 PASSED BY THE PRINCIPAL MUNSIFF COURT, NEDUMANGAD.

EXHIBIT-P2: TRUE COPY OF THE ORDER DATED 10/04/2015 IN I.A.NO.1565/2015 IN O.S.NO.577/2006 PASSED BY THE PRINCIPAL MUNSIFF COURT, NEDUMANGAD.

EXHIBIT-P3: TRUE COPY OF THE EXECUTION PETITION E.P.NO.50/2015 FILED BY THE RESPONDENT BEFORE THE MUNSIFF COURT DATED 10/04/2015.

EXHIBIT-P4: TRUE COPY OF THE E.A.NO.122/2015 IN E.P.NO.50/2015.

EXHIBIT-P5: TRUE COPY OF THE ORDER DATED 10/04/2015 IN E.A.NO.122/2015 IN E.P. NO.50/2015 IN O.S.NO.577/2006 ON THE FILE OF PRINCIPAL MUNSIFF COURT, NEDUMANGAD.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B.KEMAL PASHA, J.

.....
O.P.(C) No.1138 of 2015
.....

Dated this the 20th day of May, 2015

J U D G M E N T

The additional 4th judgement debtor in E.P.No.50/2015 in O.S.577/2006 of the Principal Munsiff's Court, Nedumangad has come up by challenging Ext.P5 order passed by the court below in E.A.No.122/2015. Even though notice has been served, there is no representation for the decree holder.

2. In the suit, a decree has been passed by declaring the plaintiff's title and possession over the plaint schedule property and the plaintiff was allowed to put up boundary on the eastern and western sides of the plaint schedule property. Over and above it, the defendants were restrained

by a decree of perpetual injunction from trespassing into the plaint schedule property and from cutting and removing trees thereon, and also from obstructing the peaceful possession and enjoyment of the plaintiff over the plaint schedule property.

3. By alleging that the present petitioner, along with others, have violated the decree of perpetual injunction, the present E.P. has been filed. Along with the E.P., strangely enough, by having recourse to Section 151 of the Code of Civil Procedure 1908, E.A.No.122/15 has been filed seeking a direction to the Station House Officer, Palode to afford police protection for the construction of the building in the 'D' schedule property. Even without issuing a notice, it seems that the court below has passed Ext.P5 order thereby directing the Station House Officer, Palode to take *“appropriate measures known to law to prevent violation of decree”*. It seems that instead of proceeding under Order XXI Rule 32 CPC, as a shortcut, such an E.A. has been filed

and strangely enough it seems that the court below has appreciated it. Much discussion is not required to conclude that Ext.P5 order is quite unknown to law and procedure and apparently illegal.

In the result, this Original Petition is allowed and Ext.P5 order passed by the court below is set aside.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge