

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

OP(C).No. 1142 of 2015 (O)

OS 310/2014 OF MUNSIF COURT, THIRUVALLA

PETITIONER(S)/RESPONDENT/DEFENDANT:

**ABRAHAM C. JOSEPH, AGED 44 YEARS,
S/O.C.A JOSEPH, CHEKKATTU HOUSE, THADIYOOR P.O,
THELLIYOOR VILLAGE, MALLAPALLY TALUK,
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.N.RADHAKRISHNAN (THIRUVALLA)**

RESPONDENT(S):

**MARIYAMMA MATHAI, AGED 66 YEARS,
W/O.LATE L. MATHAI, VALAYIL HOUSE, AMALLOOR MURI,
MANJADI P.O, KUTTAPUZHA VILLAGE,
PATHANAMTHITTA DISTRICT, PIN 689 145.**

**BY ADVS. SRI.P.HARIDAS
SRI.P.C.SHIJIN**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 04-06-2015, ALONG
WITH O.P.C.NO.1166/2012, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

OP(C).No. 1142 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHT.P1	PHOTOCOPY OF THE PLAINT IN O.S 310/2014 OF THE MUNSIFFS COURT,THIRUVALLA
EXHT.P2	COPY OF I.A 536/2014 IN O.S 310/2004 OF THE MUNSIFFS COURT,THIRUVALLA
EXHT. P3	COPY OF JUDGMENT IN OP(C) NO 2062/2014 HIGH COURT OF KERALA DATED
EXBT P4	COPY OF I.A 1229/2015 OF THE MUNSIFFS COURT THIRUVALLA
EXHT P5	COPY OF 1246/2015 IN O.S 310/2004 OF THE MUNSIFFS COURT,THIRUVALLA
EXHT.P6	OBJECTION TO P4 FILED BY THE PETITIONER DATED
EXHT.P7	OBJECTION TO P5.FILED BY THE PETITIONER DATED

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

.....
O.P.(C) Nos.1142 & 1166 of 2015
.....

Dated this the 4th day of June, 2015

J U D G M E N T

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O.S.310/2014 of the Munsiff's Court, Thiruvalla is a suit filed by the 1st petitioner in OP(C).1116/2015 for a decree of perpetual injunction for protecting a pathway in respect of the property of her son. According to her, the son is entitled to the said pathway by way of easement by grant. According to the petitioner, she is in possession of the property for and on behalf of her son working abroad. As her son was not available at the time of filing the suit, he could not be impleaded in the suit. She had filed an application for getting him impleaded as the additional 2nd defendant in the suit. Later, when she could procure a Power of Attorney from her son for conducting her case for and on behalf of him, she has filed Exts.P6 and P7 IAs for getting her son impleaded as additional 2nd plaintiff and for

enabling her to proceed with the suit for and on behalf of the proposed additional 2nd plaintiff also. Earlier, as Ext.P2 application seeking order of temporary injunction was not considered by the court below, and the same was being repeatedly adjourned, she had approached this Court with OP(C).2062/2014 and consequently, this Court had directed the court below to dispose of Ext.P2 within a period of one month from the date of receipt of a copy of the said judgment. The prayer of the petitioners in OP(C).1166/2015 is for an expeditious disposal of Exts.P6 and P7 applications along with Ext.P2 application.

2. The respondent in OP(C).1166/2015, who is the defendant in the suit, has preferred OP(C).1142/2015 seeking a direction to the court below for the expeditious disposal of Ext.P2, on the basis of Ext.P3 judgment of this Court in OP(C).2062/2014.

3. Heard the learned counsel on both sides.

4. When the original plaintiff has claimed

possession of the property for and on behalf of her son, as the suit is one for injunction alone, it cannot be said that the suit is not maintainable. A person in possession can well maintain a suit for injunction. At the same time, when she could obtain the Power of Attorney from her son, it cannot be said that the son should not be joined as a party in the suit. If as a matter of fact, he is impleaded as the additional 2nd defendant as originally claimed, it may not be possible for the original plaintiff to proceed with the suit for and on behalf of such proposed additional 2nd defendant also. That is the reason why she has precisely claimed that her son may also be impleaded as the additional 2nd defendant.

5. The learned counsel for the defendant Sri.Sreekumar G. Chelur has fairly conceded that the respondent is not standing in the way of the son of the original plaintiff to come on record as the additional 2nd plaintiff and he is not standing in the way of permitting the original plaintiff to proceed with the suit for and on behalf of

such proposed additional 2nd plaintiff also. He has pointed out that already there was a direction by this Court to dispose of Ext.P2 as it then stood. Let the court below decide the said matter contained in Ext.P2 as expeditiously as possible as it then stood. At the same time, the court below can consider and dispose of Exts.P6 and P7 also. This Court is of the view that the court below can be directed to expedite the proceedings and can be directed to dispose of Ext.P2 as well as Exts.P6 and P7 within a specific time frame.

In the result, these Original Petitions are disposed of and the court below is directed to dispose of Ext.P2 as well as Exts.P6 and P7, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
(B.KEMAL PASHA, JUDGE)