

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

OP(C).No. 3155 of 2013 (O)

**I.A. NO.4748/2013 IN OS. NO.595/2011 OF II ADDITIONAL MUNSIF COURT,
ERNAKULAM.**

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PETITIONER/PLAINTIFF:

**VIJU P.VARGHESE, AGED 45 YEARS,
S/O. LATE P.M. VARGHESE, PALAKKATTU HOUSE,
THIRUVANKULAM, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.A.T.ANILKUMAR,
SMT.V.SHYLAJA.**

RESPONDENTS/DEFENDANTS:

**1. C.R. BALAGOPALAN, AGED ABOUT 55 YEARS,
S/O. LATE KARTHYAYANI AMMA, CHALIYATH HOUSE,
THIRUVANKULAM, KOCHIN PALACE P.O., PIN-682 305,
ERNAKULAM DISTRICT.**

**2. C.R. GEETHA, AGED ABOUT 58 YEARS,
W/O. NARAYANAN KUTTY, CHALIYATH HOUSE,
KOCHIN PALACE P.O., PIN-682 018,
ERNAKULAM DISTRICT.**

**BY ADVS. SRI.K.V.JAYACHANDRAN,
SRI.RAJU V.MATHEW.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

OP(C).No. 3155 of 2013 (O)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: THE TRUE COPY OF THE PLAINT IN O.S.NO.595/2011 OF II ADDITIONAL MUNSIFFS COURT ERNAKULAM.

EXHIBIT P2: THE TRUE COPY OF THE WRITTEN STATEMENT IN O.S.NO.595/2011 OF II ADDITIONAL MUNSIFFS COURT, ERNAKULAM.

EXHIBIT P3: THE TRUE COPY OF THE I.A.NO.4748/2013 IN O.S.NO.595/2011 OF II ADDITIONAL MUNSIFFS COURT, ERNAKULAM.

EXHIBIT P4: THE TRUE COPY OF THE COUNTER AFFIDAVIT IN I.A.NO.4748/2013 O.S.NO.595/2011 OF II ADDITIONAL MUNSIFFS COURT, ERNAKULAM.

EXHIBIT P5: THE TRUE COPY OF THE ORDER IN I.A.NO.4748/2013 O.S.NO.595/2011 OF II ADDITIONAL MUNSIFFS COURT, ERNAKULAM.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

P.BHAVADASAN, J.

O.P.(C) No. 3155 of 2013

Dated this the 24th day of March, 2015

J U D G M E N T

Under challenge is Ext.P5 order whereby the court below declined to grant relief of serving interrogatories sought for by the plaintiff on the defendant in the suit.

2. The suit is one for declaration and permanent prohibitory injunction. The plaintiff claimed that he obtained property from one of the sharers of the partition deed No. 83/1953 of Tripunithura S.R.O.. According to him, there is a way laid in that partition deed for the use of the sharers. The claim of the petitioner is that the defendants are also the successors-in-interest of the sharers to the partition deed. Claiming that the C schedule pathway is the pathway which is made mention of in the partition deed and the plaintiff, being a assignee from one of the sharers in the partition deed, is entitled to use the pathway, the suit was laid. To be more precise, the claim was one of easement by grant.

3. As could be gathered from Ext.P5 order, the main dispute relates to the status of the vendor of the plaintiff. As could be seen from Ext.P5 order, the claim seems to be that the vendor of the plaintiff was not a member of Thavazhi which entered into the partition deed made mention of earlier. Therefore, it was contended by the defendants that the plaintiff is not entitled to make use of the way made mention of in the said partition deed.

4. True, the issue has been raised as to whether C schedule pathway exists and also whether the plaintiff has any manner of right to use the same.

5. The plaintiff adduced his evidence and the defendants chose not to adduce any evidence. Under those circumstances, the plaintiff sought to serve Ext.P3 interrogatories on the defendants. The court below felt that it is unnecessary for the disposal of the case and the interrogatories and the questions sought for had no relevance in the context of the case and dismissed the

petition.

6. The learned counsel appearing for the petitioner contended that the court below was not justified in declining to grant relief especially when the defendants have disputed almost all the allegations and averments contained in the plaint. If as a matter of fact, the defendants had produced their documents of title, it could have been easily seen that the way as claimed by the petitioner exists and that could have put an end to the controversy. The plaintiff is handicapped in the sense that the defendants have not chosen to mount the box to give any evidence. Under those circumstances, it is contended that the interrogatories ought to have been allowed to be served on the defendants.

7. The learned counsel appearing for the respondents on the other hand contended that serving of interrogatories is an indirect method of trying to get evidence produced through the defendants which is not permissible in law. According to the learned counsel for the respondents, it is

for the plaintiff to prove his case and not for the defendants to produce evidence in support of the plaintiff's case.

8. As already mentioned, from the impugned order, the real controversy seems to be regarding the status of the vendor of the plaintiff. The plaintiff would contend that his father purchased the property from one of the sharers to the partition deed of 1953 while the defendants would dispute the same. As could be seen from the order, there is a pathway provided in the partition deed, but according to the defendants, that pathway is for the use of the members of the Thavazhy. Their specific case is that the predecessors-in-interest of the plaintiff was not a member of Thavazhi and therefore, the plaintiff has no right to use the pathway. If that be the core issue, it escapes one's understanding as to how it will help the plaintiff by asking the defendants to produce their documents. All that the plaintiff needs to prove is that he is the successor-in-interest of one of the sharers to the partition deed of 1953. For that purpose, it is

not necessary for the defendants to produce their documents or adduce any evidence.

9. The court below, under such circumstances, was perfectly justified in declining to grant relief sought for by the plaintiff.

This petition is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge