

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

OP(C).No. 1237 of 2015 (O)

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(I.A.NO.10016/2014 AND I.A.NO.10017/2014 IN OS.NO. 492/2014 OF II ADDL.MUNSIFF
COURT, ERNAKULAM DATED 06-04-2015)
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PETITIONER/PETITIONER/PLAINTIFF:

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COCHIN SHIPYARD STAFF CO-OPERATIVE HOUSE
CONSTRUCTION SOCIETY LTD.E. NO. 346,
COCHIN SHIPYARD LTD, COCHIN-682 015,
REP. BY ITS PRESIDENT SECRETARY JABEER.K.A.**

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENTS/PETITIONERS/DEFENDANTS:

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- 1. K.T MATHEW,
S/O.LATE K.M.THOMMAN, AGED 64 YEARS,
KIZHAVANA HOUSE, VII/583 A,
VIKAS NAGAR, KUNDANNOOR, MARADU.P.O,
MARADU, PIN-682 304.**
 - 2. K.SUKUMARAN, S/O.KESAVAN,AGED 68 YEARS,
SOUPARNIKA, II/733,VIKAS NAGAR,
KUNDANNOOR, MARADU.P.O.,
MARADU, PIN-682 304.**
 - 3. PAUL SUDHAKAR, S/O.SUDHAKARAN, AGED 55 YEARS,
PAVITHRAM, X/543, VIKAS NAGAR,
KUNDANNOOR, MARADU.P.O.,
MARADU, PIN-682 304.**

**R1 TO R3 BY ADVS. SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.N.MANMADAN
SRI.M.S.IMTHIYAZ AHAMMED
SMT.P.SEENA**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 A TRUE COPY OF THE PLAINT O.S.NO.492/2014 OF 2ND
ADDL.MUNSIFF'S COURT, ERNAKULAM
- EXT.P2 A TRUE COPY OF THE ROUGH SKETCH OF THE PLAINT SCHEDULE
PROPERTY PRODUCED IN O.S.NO.492/2014
- EXT.P3 A TRUE COPY OF THE INJUNCTION ORDER DATED 21.6.2014 IN
I.A.3094/2014 IN O.S.NO.492/2015
- EXT.P4 A TRUE COPY OF THE I.A.NO.10016/2014 DISMISSED ON 6.4.2015
- EXT.P5 A TRUE COPY OF THE I.A.NO.10017/2014 DISMISSED ON 6.4.2015
- EXT.P6 A TRUE COPY OF THE DISMISSAL ORDER DATED 6.4.2015 IN
I.A.NO.10016/2014 AND I.A.NO.10017/2014 IN O.S.492/2014.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

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P.B.SURESH KUMAR, J.

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O.P.(C).No.1237 of 2015.

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Dated this the 20th day of October, 2015.

J U D G M E N T

Ext.P6 common order on two interlocutory applications namely, I.A.No.10016 of 2014 and I.A.No.10017 of 2014 filed in O.S.No.492 of 2014 on the file of the Munsiff's court Ernakulam, is under challenge in this Original Petition filed under Article 227 of the Constitution of India.

2. The petitioner in the Original Petition is the plaintiff in the suit. The petitioner is a Housing Co-operative Society of the staff of the Cochin Shipyard. They purchased an item of property and sold the same to its members, after dividing the same into various residential plots. The defendants are persons who have purchased residential plots in the layout formed by the plaintiff society. The plaint schedule property is a plot in the residential layout formed

by the plaintiff. The plaint schedule property has not been sold by the plaintiff to anybody. According to the plaintiff, defendants are attempting to trespass into the same and hence the suit for a decree of prohibitory injunction restraining the defendants from trespassing into the plaint schedule property. Along with the suit, an application for temporary injunction was filed by the plaintiff on the same lines in which the trial court granted to the plaintiff an order of temporary injunction as prayed for. The contention raised by the defendants in the suit is that the plaint schedule property is a plot in the residential layout retained as a playground and that therefore the plaintiff is not entitled to the relief sought in the suit. After having obtained the order of temporary injunction, the plaintiff filed two interlocutory applications. I.A.No.10016 of 2014 was one seeking an order to appoint an Advocate Commissioner to oversee the the work of the construction of compound wall for the plaint schedule property and I.A.No.10017 of 2014 was one

seeking police protection to construct the compound wall. According to the plaintiff, in the light of the order of temporary injunction granted in their favour, they are entitled to construct a compound wall surrounding the plaint schedule property. The above interlocutory applications were dismissed by the trial court by the common order impugned in this Original Petition.

3. Heard the learned counsel for the petitioner as also the learned counsel for the respondents.

4. On an evaluation materials on record, I am of the view that a decision on the correctness of Ext.P6 order by this Court would prejudice the parties at the time of trial. Since the correctness of Ext.P6 order is not being examined by this Court, I deem it appropriate to dispose of the original petition with a direction to the court below to dispose of the suit on merits, as expeditiously as possible.

In the result, the Original Petition is disposed of directing the court below to dispose of the suit O.S.No.492

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of 2014 as expeditiously as possible, at any rate, within three months from today.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

// true copy //

PA TO JUDGE.