

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

OP(C).No. 1352 of 2015 (O)

PETITIONER(S)/COUNTER PETITIONER/PLAINTIFF:

**J.S.MONIMON,
S/O.SIMSON, VASANTHA BHAVAN, NELLIKKAKUZH,
KANJIRAMKULAM, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.BLAZE K.JOSE
SMT.P.SHEENA RAJAN**

RESPONDENT(S)/PETITIONER/DEFENDANT:

**D.R.JOHNDA,
S/O.DASAYYAN, DAS BHAVAN, PONGIL,
MULLUVILA P.O., ATHIYANNOOR VILLAGE, NEYYATTINKARA,
THIRUVANANTHAPURAM - 695 121.**

**BY ADVS. SRI.V.G.ARUN
SRI.ANOOP BHASKAR**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: A TRUE COPY OF THE REMAND REPORT IN CRIME NO.904 OF 2012 DATED 22.9.2014.
- EXT.P-2: A TRUE COPY OF THE NEWSPAPER REPORT IN DESHABHIMANI DAILY DATED 25.10.2012.
- EXT.P-3: A TRUE COPY OF THE NOTICE PUBLISHED BY THE ACTION COUNCIL.
- EXT.P-4: A TRUE COPY OF THE FLASH NEWS DATED 3.12.2012.
- EXT.P-5: A TRUE COPY OF THE COMMON JUDGEMENT IN FAO NO.346 & 362 OF 2012 DATED 4.12.2012.
- EXT.P-6: A TRUE COPY OF THE PETITION FILED BY THE RESPONDENT IN FAO 346 OF 2012.
- EXT.P-7: A TRUE COPY OF THE JUDGEMENT IN WPC 23224 OF 2012 DATED 1.2.2013.
- EXT.P-8: A TRUE COPY OF THE ORDER IN SLP NO.17615 AND 17616 OF 2013 DATED 2.10.2013.
- EXT.P-9: A TRUE COPY OF THE NEWS PAPER REPORT IN KERALA KAUMUDI DAILY DATED 19.9.2014.
- EXT.P-10: A TRUE COPY OF THE ORDER IN I.A.NO.917 OF 2013 IN O.S.NO.267 OF 2012 DATED 10.4.2015 OF THE HON'BLE SUB COURT, NEYYATTINKARA.
- EXT.P-11: A TRUE COPY OF THE JUDGMENT IN WPC 22971 OF 2013 DTD.6.4.2015.
- EXT.P-12: A TRUE COPY OF THE ORDER IN RP.NO.438/2015 DTD.12.6.2015.
- EXT.P-13: A TRUE COPY OF THE FINAL REPORT FILED BY KANJIRAMKULAM POLICE IN CRIME NO.908/2014.

RESPONDENT(S)' EXHIBITS:

- EXTR1(a): THE TRUE COPY OF THE SALE DEED NO.365/2010 DTD.27.3.2010.
- EXT.R1(b): THE TRUE COPY OF THE SALE DEED NO.1617/2011 DTD.29.12.2012.
- EXT.R1(c): THE TRUE COPY OF THE SALE DEED NO.690/2011 DTD.10.8.2011.
- EXT.R1(d): TRUE COPY OF PLAINT IN OS.NO.267/2012.

Msv/

OP(C).No. 1352 of 2015 (O)

EXT.R1(e): THE TRUE COPY OF I.A.NO.1124/2012 IN OS.NO.267/2012.

EXT.R1(f): THE TRUE COPY OF COMMON ORDER, DTD.11.10.2012 IN IA.NO.1055/2012 & IA.NO.1124/2012, BY THE FILE OF SUB COURT, NEYYATTINKARA.

EXT.R1(g): THE TRUE COPY OF ALLEGED AGREEMENT FOR RE-CONVEYANCE DTD.10.8.2011.

EXT.R1(h): THE TRUE COPY OF LETTER ISSUED BY THE STATE PUB INFORMATION OFFICER, PRINCIPAL SUB-TREASURY, TRIVANDRUM DTD.18.9.2012.

EXT.R1(i): THE TRUE COPY OF THE ORIGINAL LEDGER OF STAMP VENDOR VAMADEVAN ISSUED BY STATE PUBLIC INFORMATION OFFICER, PRINCIPAL SUB-TREASURY, TRIVANDRUM.

EXT.R1(j): THE TRUE COPY OF THE FIR NO.545/2012 OF KANJIRAMKULAM POLICE STATION.

EXT.R1(k): THE TRUE COPY OF THE FIR NO.540/2012 OF KANJIRAMKULAM POLICE STATION.

EXT.R1(l): THE TRUE COPY OF THE WOUND CERTIFICATE OF THE RESPONDENT.

EXT.R1(m): THE TRUE COPY OF THE WOUND CERTIFICATE OF THE WIFE OF RESPONDENT.

EXT.R1(n): THE TRUE COPY OF THE WOUND CERTIFICATE OF THE MOTHER OF RESPONDENT.

EXT.R1(o): THE TRUE COPY OF THE FINAL JUDGMENT OF THIS HON'BLE COURT IN FAO NO.346/12 AND FAO NO.362/12 DTD.4.12.2012.

EXT.R1(p): THE TRUE COPY OF THE ORDER IN SLP BY THE HON'BLE SUPREME COURT OF INDIA DTD.21.10.2013.

EXT.R1(q): TRUE COPY OF REFER REPORT DTD.12.11.2014 FILED BY CIRCLE INSPECTOR OF POLICE, POOVAR.

EXT.R1(r): THE TRUE COPY OF I.A.NO.917/2013 IN OS.NO.267/2012 DTD.29.5.2013 FILED BEFORE THE SUB COURT, NEYYATTINKARA.

EXT.R1(s): THE TRUE COPY OF THE OBJECTION DTD.14.6.2013 FILED BY THE PETITIONER AGAINST IA.NO.917/2013 IN OS.NO.267/2012 BEFORE THE SUB COURT, NEYYATTINKARA.

EXT.R1(t): THE TRUE COPY OF FIR IN CRIME NO.908/2014 OF KANJIRAMKULAM POLICE STATION.

//TRUE COPY//

P.S.TO JUDGE

Msv/

B.KEMAL PASHA, J.

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O.P.(C).No.1352 of 2015

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Dated this the 14th day of July, 2015

J U D G M E N T

Exhibit P10 order by which the court below has granted necessary Police aid to the petitioner to implement the order of status-quo passed by the Division Bench of this Court in F.A.O.No.346 and 362 of 2012, is under challenge. The case of the plaintiff is that he was forced to execute three sale deeds, merely as security for loans availed from the defendant. The defendant contended that those sale deeds were not executed as security; whereas the same were out right sales through three documents, which are Exhibits R1(a), R1(b) and R1(c). The petitioner/plaintiff and the defendant/respondent filed separate IAs seeking temporary injunction. An order of temporary injunction was passed by the court below on the I.A. filed by the respondent, through Exhibit R1(f) common order. The I.A.

filed by the plaintiff seeking an order of temporary injunction was dismissed.

2. The plaintiff filed two F.A.Os on the said common order, one on the order passed on the I.A. seeking temporary injunction filed by the defendant and the other on the dismissal of the I.A. filed by the plaintiff. The said F.A.Os were disposed of by this Court through Exhibit P5 judgment. In page No.3 of Exhibit P5, the Division Bench of this Court held as follows:

“Under such circumstances, in modification of the orders impugned, it is ordered that the parties will maintain the status obtained by the sale deeds executed by the plaintiff in favour of the defendant, that is to say, the defendant will continue to be in possession of all the properties including buildings covered by the documents and will also be eligible to collect rent from the rented premises. However, the rent so collected and all other income, if any, shall be promptly accounted, as and when called for during the course of the suit. The residential building, which the defendant says is being leased out to one Ms.Victoria, shall be permitted to be occupied by the plaintiff for a monthly occupational charge of ₹3,000/- (Rupees three thousand only). We fix that amount since

the occupational charges which the defendant has fixed for Ms.Victoria was ₹2,000/- (Rupees two thousand only) per month. The status quo that would be obtained by this judgment will continue to operate till the disposal of the suit.”

3. Alleging that there are frequent interference from the part of the plaintiff, I.A.No.917 of 2013 was filed by the defendant before the court below seeking Police assistance for getting the order of status-quo implemented. It seems that the court below has passed Exhibit P10 order, thereby directing the Police to render necessary Police protection to the respondent *“to protect his possession of the plaint schedule properties and for collecting rent of the rented premises and all other income by maintaining the status-quo ordered by the Hon’ble High Court till the disposal of the suit.”*

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. The apprehension forwarded by the learned counsel for the petitioner as against Exhibit P10 is that

under the guise of Exhibit P10 order, there will be every chance to have an attempt to snatch away possession of those premises which do not form part of the sale deeds allegedly executed by the plaintiff in favour of the defendant. As an illustration, the learned counsel for the petitioner has pointed out that even though Exhibit R1(b) sale deed produced by the defendant before the court below shows room Nos.1279, 1280 and 1281 also along with shop room Nos. 66 and 68 in the schedule over and above building No.67, Exhibit A6 certified copy of the said sale deed obtained from the Sub Registry shows only room Nos.66 and 68 over and above building No.67 in the schedule, and room Nos.1279, 1280 and 1281 are conspicuously absent in the schedule in Exhibit A6. According to the learned counsel for the petitioner, the inclusion of room Nos.1279, 1280 and 1281 in Exhibit R1(b) sale deed, are deliberate manipulations in the document. Even though the said contention was seen taken before the court below, it seems

that the court below has discarded the same by merely stating that even though room numbers are not mentioned in the document, the property covered by the document includes the buildings in it.

6. Over and above the aforesaid arguments, the learned counsel for the petitioner has pointed out that room Nos. 63, 64, 1282 and 1283 are also do not find a place in the schedules appended with any of the three sale deeds. Apprehension put forwarded by the petitioner is that under the guise of Exhibit P10, there will be an attempt from the part of the respondent to snatch away from the plaintiff, those rooms which are in the possession of the plaintiff.

6. According to the learned counsel for the respondent, the omission of room Nos.1279, 1280 and 1281 in Exhibit A6 happened solely due to an innocent omission from the part of the Scribe, who prepared the copying sheet in respect of Exhibit R1(b). Those things do not arise for consideration at present. Through Exhibit P5 judgment, the

Division Bench of this Court has confined the order to those '*buildings covered by the documents*'. It seems that Exhibit P5 judgment was passed by the Division Bench of this Court in modification to Exhibit R1(f) order passed by the court below. It is Exhibit P5 judgment passed by this Court, which is now sought to be implemented. Therefore, at present, Exhibit P10 order should be confined to the matters contained in Exhibit P5 judgment. When the Division Bench of this Court has clearly mentioned '*buildings covered by the documents*', room Nos. 63, 64, 1282 and 1283 which do not find a place in any of the documents cannot be dragged in to Exhibit P10 order. Similarly, when there is a dispute with regard to room Nos.1279, 1280 and 1281, the same also need not be included within the preview of Exhibit P10 order. Of course, the learned counsel for the petitioner has undertaken that there will not be any resistance or obstruction from the part of the petitioner in implementing Exhibit P5 judgment so far as it relates to room Nos.62, 65,

66, 67, 68, 69 and 70. Admittedly, building No.67 is a residential building which is presently permitted to be occupied by the plaintiff on a monthly occupational charge of ₹3,000/-, through Exhibit P5 judgment. Therefore, Exhibit P10 order is liable to be modified to that effect.

In the result, this Original Petition (Civil) is allowed in part by modifying Exhibit P10. Presently, Exhibit P10 shall not include room Nos.1279, 1280 and 1281 as well as room Nos.63, 64, 1282 and 1283. The question whether room Nos.1279, 1280 and 1281 were really intended to be transferred through the sale deed in question has to be decided by the court below on evidence. The court below shall dispose of the suit on merits, as expeditiously as possible, at any rate within the period of six months from the date of receipt of a copy of this judgment.

Sd/-

B.KEMAL PASHA
JUDGE