

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

OP(C).No. 1703 of 2015 (O)

OS.NO. 161/2012 OF MUNSIFF COURT, HARIPPAD

PETITIONERS :

1. G.VISWAN, AGED 60 YEARS
ANIZHAM HOUSE, CHEPPAD EAST MURI,
CHEPPAD VILLAGE.
2. SWARNA LATHA,
W/O.VISWAN, ANIZHAM HOUSE, CHEPPAD EAST MURI
CHEPPAD VILLAGE.

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENT :

V.A. NAAZ, AGED 36 YEARS
S/O.ABDUL KHADER, VETTUVELIL HOUSE, MUTHOOR MURI
THIRUVALLA VILLAGE, PATHANAMTHITTA DISTRICT-691 186.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT. P1 TRUE COPY OF THE COUNTER CLAIM PLAINT IN O.S. NO.161/2012 BEFORE THE MUNSIF'S COURT HARIPPAD DATED 22.8.2012.
- EXT. P2 TRUE COY OF THE WRITTEN STATEMENT TO THE COUNTER CLAIM FILED BY THE RESPONDENT IN O.S.161/2012 BEFORE THE MUNSIF'S COURT, HARIPPAD DATED 5-6-2013.
- EXT. P3 TRUE COPY OF THE ANSWER RECEIVED FORM THE TAHSILDAR, KARTHIKAPPALLY.
- EXT. P4 TRUE COPY OF THE PETITION FILED FOR REOPENING THE EVIDENCE OF COUNTER CLAIM PLAINTIFFS BY REVIEWING THE ORDER ADJOURNING THE CASE FOR HEARING AFTER CLOSING THE EVIDENCE OF COUNTER CLAIM PLAINTIFFS IN I.A.273 OF 2015.
- EXT. P5 TRUE COPY OF THE ADDITIONAL WITNESS LIST IN O.S.161/2012,BEFORE THE MUNSIF'S COURT HARIPPAD DATED NIL.
- EXT. P6 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT AGAINST EXHIBIT P4 PETITION FOR REOPENING EVIDENCE IN O.S.161/2012 BEFORE THE MUNSIF'S COURT, HARIPPAD DATED 19-2-2015.
- EXT. P7 TRUE COPY OF THE ORDER IN I.A.272/2015 IN O.S. NO. 161/2012 BEFORE THE MUNSIF'S COURT, HARIPPAD DATED 30-05-2015.
- EXT. P8 TRUE COPY OF THE ORDER IN I.A.273/2015 IN O.S.161/2012 BEFORE THE MUNSIF'S COURT, HARIPPAD DATED 30-05-2015.
- EXT. P9 TRUE COPY OF THE AMENDMENT PETITION FILED IN I.A.810/2015 IN O.S.161/2012 OF THE HARIPAD MUNSIF'S COURT DATED NIL.
- EXT. P10 TRUE COPY OF THE OBJECTION TO EXHIBIT P8 AMENDMENT PETITION IN O.S.161/2012 BEFORE THE MUNSIF'S COURT, HARIPPAD DATED 22-6-2015.
- EXT. P11 TRUE COPY OF THE ORDER IN I.A.810/2015 IN O.S.161/2012 BEFORE THE MUNSIF'S COURT, HARIPPAD DATED 4-7-2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. ABRAHAM MATHEW, J.

O.P.(C)No.1703 of 2015

Dated this the 16th day of September, 2015

J U D G M E N T

The respondent filed O.S.No.161 of 2012 in the Court of Munsiff, Haripad for perpetual injunction prohibiting the first petitioner, who is the only defendant in the suit from evicting him by force from the plaint scheduled shop room. The first petitioner along with the second petitioner filed a counter claim alleging that the respondent is a tenant under both of them. In the counter claim they pray for a mandatory injunction directing the respondent to vacate the plaint schedule room and compensation for unauthorised use and occupation. The respondent contended that he is the tenant under the Kerala Buildings Lease and Rent Control Act and the civil court has no jurisdiction to pass a decree for eviction. Evidence was recorded. Then the petitioners filed IA.No.273 of 2015 to reopen the evidence, the purpose of which was to produce a document and to examine a witness. He also filed IA.No.810 of 2015 to amend the written statement

(counter claim) to incorporate the relief of recovery of possession instead of mandatory injunction. The learned Munsiff dismissed all the applications. This is challenged in this O.P.

2. Heard.

3. The document sought to be produced is a document received under the Right to Information Act. It is issued from the Taluk Office, Kanjirappally. It says that no document is available at Taluk office showing that the plaint schedule shop room is situated in an area covered by a notification issued under the Kerala Buildings Lease and Rent Control Act. A document received under the Right to Information Act is not a certified copy and it is not admissible in evidence. Moreover, the burden is on the respondent to prove that the civil court has no jurisdiction to entertain the suit. For these reasons the application to reopen the evidence and the other application to issue summons to the Tahsildar to prove the document obtained under the Right to Information Act could not have been allowed and the learned Munsiff rightly dismissed them.

4. Now the next question is whether the application for amendment should have been allowed. Admittedly, there is landlord and tenant between the first plaintiff and the respondent. The prayer is for recovery of possession and mandatory injunction. The amendment sought for is to delete the relief of mandatory injunction. The amendment will not affect the rights of the respondent/plaintiff. Nor will it change the nature and character of the suit. Even in the absence of an application, the learned Munsiff should have directed the petitioners to amend the counter claim. So I am inclined to grant the prayer in IA.No.810 of 2015. Ext.P11 is liable to be set aside.

In the result, this O.P. is allowed in part. Ext.P11 order is set aside. IA.No.810 of 2015 is allowed on payment of costs of Rs.3,000/- (Rupees Three thousand only). The costs shall be paid to the plaintiff in the lower court on or before 09.10.2015.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge