IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

OP(C).No. 991 of 2014 (O)

CMA 36/2013 OF SUB COURT, HOSDRUG.
O.S.NO.385/2013 OF THE MUNSIFF COURT, HOSDURG

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PETITIONERS/RESPONDENTS/DEFENDANTS:

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1. **SAFIA JUMA MASGID COMMITTEE,**
   REPRESENTED BY ITS PRESIDENT,
   M. MOHAMMAD KUNHI, S/O.MOIDEENKUNHI,
   AGED 59 YEARS, BUSINESSMAN, RESIDING AT
   THEKKEPURAM, AJANOOR VILLAGE, P.O.KANHANGAD,
   HOSDRUG TALUK, KASARAGOD DISTRICT, PIN - 671 315.

2. **M.K.SATHAR, S/O.K.K.KUNHABDULLA, AGED 45 YEARS,**
   SUB ENGINEER (KSEB), M.K.HOUSE,
   KOOLIYANGAL, P.O.ARANGADY, KANHANGAD,
   HOSDRUG TALUK, KASARAGOD DISTRICT - 671 315.

3. **K.C. MUHAMMED, S/O.ABDULLA, AGED 50 YEARS,**
   BUSINESSMAN, RESIDING NEAR
   IQBAL HIGHER SECONDARY SCHOOL,
   P.O.KOLAVAYAL, AJANOOR VILLAGE, HOSDRUG TALUK,
   KASARAGOD DISTRICT - 671 315.

4. **SULFIKHEER, S/O.ABDULRAHIMAN, AGED 40 YEARS,**
   BUSINESSMAN, RESIDING OPPOSITE PETROL PUMP,
   P.O.PALLIKKERE, HOSDURG TALUK,
   KASARAGOD DISTRICT - 671 316.

5. **ABDUL HAMEED, S/O.MOHAMMAD KUNHI,**
   AGED 62 YEARS, RESIDING AT ARANGADY,
   HOSDRUG VILLAGE, P.O.KANHANGAD,
   KASARAGOD DISTRICT - 671 315.

BY ADV. SRI.R.SURENDRAN

OP(C).No. 991 of 2014 (O)

RESPONDENT/APPELLANT/PLAINTIFF:

KERALA NADVATHUL MUJAHIDEEN,
REP.BY ITS GENERAL SECRETARY
A.P.ABDULKHADER MOULAVI
S/O.SAINUDHEEN, AGED 79 YEARS, RETD. TEACHER,
MUJAHIDEEN CENTRE, ANNIE HALL ROAD,
KOZHIKODE P.O., KOZHIKODE - 673 002.

*ADDL. R2 IMPLEADED

2. SRI.P.P.UNNEENKUTTY MOULAVI,
SECRETARY IN CHARGE,
KERALA NADVATHUL MUJAHIDEEN
MUJAHIDEEN CENTRE, ANNIE HALL ROAD,
KOZHIKODE P.O., KOZHIKODE - 673 002.

ADDL. R2 IS IMPLEADED AS PER ORDER DATED 11.6.2014
IN IA.7642/2014 IN OPC.

BY ADV. SRI.T.H.ABDUL AZEEZ

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 07-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

OP(C).No. 991 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE PLAINT DATED 04.11.2013 IN O.S.NO.385/2013 ON THE FILE OF THE MUNSIFF COURT, HOSDRUG.

EXHIBIT P2 : TRUE COPY OF I.A.NO.2342/2013 IN O.S.NO.385/2013 ON THE FILE OF THE MUNSIFF COURT, HOSDURG.

EXHIBIT P3 : TRUE COPY OF THE COUNTER STATEMENT DATED 22.11.2013 IN I.A.NO.2342/2013 IN O.S.NO.385/2013 ON THE FILE OF THE MUNSIFF COURT, HOSDURG.

EXHIBIT P4 : TRUE COPY OF THE WRITTEN STATEMENT DATED 11.12.2013 IN O.S.NO.385/2013 ON THE FILE OF THE MUNSIFF COURT, HOSDURG.

EXHIBIT P5 : TRUE COPY OF ORDER DATED 04.12.2013 IN I.A.NO.2342/2013 IN O.S.NO.385/2013 ON THE FILE OF THE MUNSIFF COURT, HOSDURG.

EXHIBIT P6 : TRUE COPY OF THE MEMORANDUM OF APPEAL IN C.M.A NO.36 OF 2013 ON THE FILE OF THE SUB COURT, HOSDURG.

EXHIBIT P7 : TRUE COPY OF THE JUDGMENT DATED 07.03.2014 IN C.M.A.NO.36/2013 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, HOSDRUG.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

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O.P.(C) No.991 of 2014

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Dated this the 7th day of July 2015

J U D G M E N T

What is under challenge is Ext.P7 order, by which the appellate court has passed an order of temporary injunction restraining the defendants and their men from preventing the appellant or his men from demolishing or removing the compound wall unauthorizedly put up on the western side of the plaint schedule property.

2. Through Ext.P7 impugned judgment it seems that the appellate court has disposed of the suit as such and granted the entire relief which could be granted only after a

full-fledged trial. It seems that even without passing an order of temporary mandatory injunction, what has been passed is an order of temporary injunction.

3. On hearing both the learned counsel for the parties and on a perusal of Ext.P7 judgment, this Court is satisfied that Ext.P7 judgment is not worthy to be acted upon, and the same is, *perse*, illegal, irregular and improper. Therefore, Ext.P7 judgment is liable to be set aside. This Court is satisfied that the court below can be directed to dispose of the suit, as expeditiously as possible, at any rate, within a period of eight months from the date of receipt of a copy of this judgment, quite untrammeled by any of the observations made by the court below in the order on the IA as well as the judgment passed by the appellate court in the CMA.

In the result, this Original Petition is allowed and Ext.P7 judgment is set aside. The court below shall dispose of the suit, as expeditiously as possible, at any rate, within a

period of eight months from the date of receipt of a copy of this judgment, quite untrammeled by any of the observations made by the court below in the order on the IA as well as the judgment passed by the appellate court in the CMA.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy] P.S. to Judge