

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

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

OP(C).No. 2462 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN OS 981/2015 of PRL.M.C.,ERNAKULAM

PETITIONER(S)/2ND PLAINTIFFS:

**ABY T. ALEX AGED 46 YEARS
S/O.T.ALEXANDAR, 2B-SILPAKALA RESIDENCYKAKKANAD P.O.
ERNAKULAM.**

**BY ADVS.SMT.R.LEELA
SMT.P.I.SHAMLATH
SMT.U.S.SARITHA**

RESPONDENT(S)/DEFENDANT:

**BINU C.V.
S/O.VARGHESE, CHAKIYATHPRAMBIL HOUSE, PUTHANPALLI
VARAPUZHA P.O., ERNAKULAM 683 517.**

**R1 BY ADV. SRI.A.T.ANILKUMAR
R1 BY ADV. SMT.V.SHYLAJA**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1: THE TRUE COPY OF THE PLAINT IN OS NO.981/2015 BEFORE THE MUNSIF COURT IV, ERNAKULAM

EXHIBIT.P2: THE TRUE COPY OF THE INTERIM APPLICATION NO.5901/2015 IN OS NO.981/2015 FILED BY THE PETITIONER BEFORE THE MUNSIF COURT IV, ERNAKULAM

EXHIBIT.P3: THE TRUE COPY OF THE COMMISSION REPORT DATED 12/8/2015 IN I.A NO.5901/2015.

EXHIBIT.P4: THE TRUE COPY OF THE IA NO.6765/2015 IN OS NO.981/2015 FILED BEFORE THE MUNSIF COURT IV, ERNAKULAM

EXHIBIT.P5: THE TRUE COPY OF THE COMMISSIONER REPORT IN IA NO.6765/2015 FILED BEFORE THE COURT BELOW

EXHIBIT.P6: THE TRUE COPY OF THE IA NO.7230/2015 IN OS NO.981/2015

EXHIBIT.P7: THE TRUE COPY OF THE OBJECTION FILED BY THE COUNSEL FOR THE RESPONDENT IN IA NO.7230/2015

EXHIBIT.P8: THE TYPED COPY OF THE ORDER IN IA NO.7230/2015 IN OS NO.981/2015 OF THE MUNSIF COURT, ERNAKULAM

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

ABRAHAM MATHEW, J.

O.P.(C).No.2462 of 2015

Dated this the 20th day of October, 2015

J U D G M E N T

Petitioners are the plaintiffs and the respondent is the defendant in O.S.981 of 2015 of Munsiff Court, Ernakulam. The latter undertook to construct a building in the property of the former. It is alleged that before the construction could be completed the contract was terminated. The petitioners pray for an injunction. The commissioner appointed by the court prepared an inventory. The petitioners work abroad. When they came back to Kerala they saw that the lock of the building had been sealed unauthorisedly by someone. They filed an application to appoint a commissioner and allow them to break open the lock. By Ext.P8 order the learned Munsiff allowed it. But he directed the commissioner to relock the door and produce the key before the court. This direction is challenged.

2. Heard.

3. The facts of the case indicate that the respondent conducted himself in a highhanded manner. This should not have been allowed by the trial court. The

trial court should have allowed the petitioners to break open the lock by themselves and re-occupy the building. But as an abundant caution a commission application was filed by the petitioners and it was allowed by the court. But the direction to re-lock the door and produce the key before the court cannot be upheld. The petitioners have every right to occupy the building. The learned counsel for the respondent Sri.Anilkumar submits that the petitioners shall not be allowed to do any work before the measurements are taken. The trial court shall pass appropriate orders to protect the interest of the respondent. If the respondent files an commission application for the said purpose, the trial court shall consider it on merits.

In the result, this O.P is allowed. The direction of the trial court to relock the building and produce the key before the court is set aside. The petitioners are allowed to occupy the building, for which the key shall be given to them by the court forthwith. But they shall not do any construction in the property for one month from the date of receipt or production of a copy of this judgment by the

trial court. The respondent shall file a commission application within seven days. Thereafter, within one month the measurements shall be taken, failing which the petitioners are at liberty to do any work in the property. It is made clear that this order will not stand in the way of the petitioners getting electric and water supply to the building.

sd/-

K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge