

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

OP(C).No. 1379 of 2014 (O)

AGAINST THE ORDER IN OS 472/2011 of PRINCIPAL SUB COURT, ERNAKULAM
DATED 9-7-2014.

PETITIONER/1ST RESPONDENT IN I.A NO.4007/2010
DEFENDANT NO.1 IN O.S NO.472/2011 OF SUB COURT, ERNAKULAM :

K.O.JOSEPH, AGED 82 YEARS,
S/O.LATE OUSEPH, KACHAPPILLIL HOUSE, PALARIVATTOM P.O.,
AMRITHA LANE, VINCENT DE PAUL, ERNAKULAM.

BY ADVS.SRI.T.K.RADHAKRISHNAN.
SRI.T.B.GAFOOR.
SMT.TEENA CHERIAN.
SMT.S.SREEDEVI(ALP).
SRI.K.J.GLADIS.
SMT.K.S.SUDHA.

RESPONDENT(S)/PLAINTIFF AND DEFENANT NO.2 IN O.S NO.472/2011
OF SUB COURT, ERNAKULAM :

1. FR.GODFREY, AGED 75 YEARS,
S/O.LATE OUSEPH, KACHAPPILLIL HOUSE, KARIAPURAM,
BISHOP HOUSE, KADAPA, ANDHRA PRADESH-516 003,
REPRESENTED BY P/A. HOLDER P.J.THOMAS,AGED 57 YEARS,
S/O.LATE JOHN, PAZHAMPILLIL HOUSE,
CHEMBUMUKKU, THRIKKAKARA, KOCHI-682 021.

2. KERALA CARS PVT. LTD
508A, ILLIKKATTU BUILDING, EDAPPALLY P.O.
KOCHI-24, REPRESENTED BY ITS MANAGING DIRECTOR.

R1 BY ADV. SRI.JOBY JACOB PULICKEKUDY.
R2 BY ADV. SRI.P.VISWANATHAN.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-01-2015, ALONG
WITH OPC. 1485/2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A.HARIPRASAD, J.

O.P (C) Nos.1379 & 1485 of 2014

Dated this the 23rd day of January, 2015.

COMMON JUDGMENT

Petitioner in O.P(C) No.1485/2014 is the plaintiff in O.S No.472/2011 before the Sub Court, Ernakulam. Petitioner in O.P (C) No.1379/2014 is the first defendant in the suit. Dissatisfied with the common order passed by the learned Sub Judge in certain interlocutory applications, both of them have preferred these petitions.

2. Heard the learned counsel for the petitioners in both matters and also the tenant of the building included in the property.

3. The case of the plaintiff is that the first defendant had constructed a building encroaching upon the property of the plaintiff and he is collecting the rent for the entire building, including the portion which stands on the alleged encroached area. As per the common order, the learned Sub Judge allowed

I.A No.5214/2013 for making certain corrections. There is no objection for anyone regarding that matter. What are the subject matters of challenge in the petitions are the orders passed on I.A Nos.4007/2010 and 5214/2013. As per the order passed by the learned Sub Judge on I.A No.4007/2010, the prayer for directing the first defendant to deposit in court the amount collected by him as rent till the disposal of the case was allowed. The grievance of the first defendant is that the entire amount of rent, without regard to the area included in the suit, has been directed to be deposited in court. As per order on I.A No.5214/2013, the court below was requested to pass an order directing the first defendant to deposit the entire rent received so far from the tenant (second respondent). Learned counsel for the first defendant submitted that it will come to a huge amount, actually more than the plaint claim since the rent is collected for undisputed area of the building as well. It is not clear from the

records as to what is the total area of the building and what is the area standing on the land allegedly encroached upon by the first defendant. Without ascertaining that fact, it may not be possible to effectively adjudicate the lis. Counsel appearing for all the parties submitted that the suit is ripe for trial. All these questions can be effectively resolved in the trial, if parties adduce evidence to substantiate their contentions. Learned counsel for the plaintiff submitted that the plaintiff is an aged person and the matter is prolonged for no reason. Hence, the counsel request that the matter be directed to be expedited by the court below. Considering the entire facts and circumstances of the case, I am of the view that the following order can be passed to meet the ends of justice.

In the result, the court below is directed to try and dispose of the case finally within a period of four months from the date of production of this common judgment.

The parties shall produce documents to substantiate their contentions without delay. The first defendant, if so advised, can approach the court below to get release of the pro rata rent for the undisputed portion of the building. The plaintiff, if proves his title in respect of the disputed land, will be entitled to claim proportionate rent accrued even during pendency. The petitions are disposed accordingly.

Sd/-
A.HARIPRASAD,
JUDGE.

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P.A to Judge