

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP(C).No. 1456 of 2014 (O)

AGAINST THE ORDER/JUDGMENT IN CMA 7/2012 of SUB COURT,KATTAPPANA

PETITIONER(S):

1. **BHAGIRATHYAMMA W/O. KARUNAKARAN
PANNIYAMPATHALIL HOUSE,
ATTAPALLAM KARA, KUMILY.P.O. 685509
IDUKKI DISTRICT.**
2. **KARUNAKARAN
SON OF LATE KUNJUKUTTAN
PANNIYAMPATHALIL HOUSE,
ATTAPALLAM KARA, KUMILY.P.O. 685509
IDUKKI DISTRICT.**

**BY ADVS.SRI.MATHEWS K.UTHUPPACHAN
SRI.TERRY V.JAMES
SRI.SABU THOMAS (THUDIAMPLACKAL)**

RESPONDENT(S):

1. **VIJAYAN AGED AT ABOUT 50 YEARS
S/O. MADHAVAN, RESIDING AT MANNAYATHIL HOUSE
CHAKKUPPALAM KARA, CHAKKUPPALLAM.P.O
ANAKKARA VILLAGE, UDUMBANCHOLA TALUK
IDUKKI DISTRICT-685509.**
2. **BIJU AGED AT ABOUT 31 YEARSS
S/O.THANKACHAN, RESIDING AT MAZHUVANCHERRY HOUSE
6TH MILE KARA, CHAKKUPPALAM.P.O
CHAKKUPPALLAM VILLAGE, UDUMBANCHOLA TALUK
IDUKKI DISTRICT-685509.**
3. **PUSHPAN, AGED AT ABOUT 38 YEARSS
S/O.MADHAVAN, RESIDING AT MANNAYATHIL HOUSE
CHELACHUVADU KARA, CHELACHUVADU.P.O
IDUKKI-KANJIKKUZHI VILLAGE
THODUPUZZHA TALUK, IDUKKI DISTRICT-685606.**
4. **NEETHU AGED AT ABOUT 25 YEARS, W/O.KUTTAI
RESIDING AT CHAKKALAMURIYIL HOUSE,
AMARAVATHI KARA, AMARAVATHI.P.O.
KUMILY VILLAGE, PEERMADE TALUK, IDUKKI DISTRICT-685509.**

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- 5. KUTTAI AGED AT ABOUT 29 YEARSS
S/O.THANKAPPAN, RESIDING AT CHAKKALAMURIYIL HOUSE,
AMARAVATHI KARA, AMARAVATHI.P.O.
KUMILY VILLAGE, PEERMADE TALUK, IDUKKI DISTRICT-685509.**
- 6. NISHA AGED AT ABOUT 29 YEARS
W/O.BILU, RESIDING AT MAZHUVANCHERRY HOUSE
6TH MILE KARA, CHAKKUPALLAM.P.O.,
CHAKKUPALLAM VILLAGE
UDUMBANCHOLA TALUK, IDUKKI DISTRICT-685509.**

R1 BY ADV. SRI.T.A.UNNIKRISHNAN

R1 BY ADV. SRI.K.S.PRAVEEN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE COPY OF THE PLAINT IN O.S.25 OF 2011 BEFORE THE MUNSIFF'S COURT, PEERMADE.

EXT.P2 TRUE COPY OF I.A.144 OF 2011 IN O.S.25 OF 2011 BEFORE THE MUNSIFF'S COURT, PEERMADE (WITHOUT EXHIBITS)

EXT.P3 TRUE COPY OF THE ORDER DATED 18-2-2012 IN I.A.144 OF 2011 IN O.S.25 OF 2011 OF THE MUNSIFF'S COURT, PEERMADE.

EXT.P4 TRUE COPY OF THE ORDER DATED 20-7-2011 IN CMP 3211 OF 2010 OF THIS JUDICIAL FIRST CLASS MAGISTRATE COURT.

EXT.P5 TRUE COPY OF O.S.186 OF 2011 BEFORE THE MUNSIFF'S COURT, PEERMADE.

EXT.P6 TRUE COPY OF I.A.767 OF 2011 IN O.S.186 OF 2011 BEFORE THE MUNSIFF'S COURT, PEERMADE

EXT.P7 TRUE COPY OF THE DATEAD 16-1-2014 IN CMA.7 OF 2012 OF THE SUBORDINATE JUDGE'S COURT, KATTAPPANA.

EXT.P8 TRUE COPY OF I.A.1030 OF 2011 IN O.S.186 OF 2011 BEFORE THE MUNSIFF'S COURT, PEERMADE. (WITHOUT EXHIBITS)

EXT.P9 TRUE COPY OF THE I.A.1030 OF 2011 IN O.S.186 OF 2011 BEFORE THE MUNSIFF'S COURT, PEERMADE.

EXT.P10 TRUE COPY OF I.A.185 OF 2014 IN O.S.25 OF 2011. (WITHOUT EXHIBITS)

EXT.P11 COUNTER AFFIDAVIT FILED BY THE RESPONDENTS IN I.A.185 OF 2014 IN O.S.25 OF 2011.

EXT.P12 TRUE COPY OF THE ORDER DATED 8-4-2014 IN I.A.185 OF 2014 IN O.S.25 OF 2011.

RESPONDENT'S EXHIBITS: NIL

R.AV

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PA to Judge

K. ABRAHAM MATHEW, J.

O.P.(C)NO.1456 of 2014

Dated this the 9th day of November, 2015

J U D G M E N T

Petitioner is the plaintiff in OS.25 of 2011 on the file of Munsiff Court, Peermade. On the application filed by him for a temporary injunction the learned Munsiff has restrained the respondents from trespassing into the plaint schedule property or interfering with the peaceful possession and enjoyment thereof by the petitioner. The order was confirmed by the appellate court and this court. She filed Ext.P8 application to give her police assistance complaining that the respondents did not allow her to enter the property. By Ext.P12 order the learned Munsiff has dismissed it. This is challenged.

2. Heard.

3. The petitioner has not filed an application Under Order 39 Rule 2A CPC, or an application to enforce the order of injunction which can be enforced like a decree in view of Section 36 CPC. There is no explanation for it. From the address given in the O.P it is seen that none of the respondents reside in the locality in which the property

is situated. But the learned counsel for the respondents submit that, in fact, respondents 4 and 6 reside in the same locality. There is every reason to doubt the bonafides of the application filed by the petitioner. Learned counsel for the petitioner submits that the respondents left the place after locking the door of the building and they are unable to enter the building. If that is true, their remedy is to file an application before the learned Munsiff to depute an ameen to break open the lock in the presence of a commissioner. The facts of the case do not justify directing police to enforce the order of injunction. The learned Munsiff has rightly dismissed the application.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge

