

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

OP(C).No. 2654 of 2015 (O)

I.A.NO.445/2015 IN O.S.NO.344/2014 THE MUNSIFF'S COURT, THODUPUZHA

PETITIONER(S) :

**P.A.SEBASTIAN, AGED 65 YEARS,
S/O.AUGUSTHY, PUTHIYEDATH (H),
THODUPUZHA KARA, THODUPUZHA VILLAGE,
THODUPUZHA TALUK.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S) :

**K.M.STEPHEN,
S/O.MATHAI, AGED 62 YEARS, KUNNAMKUZHACKAL (H),
KOLANI, THODUPUZHA VILLAGE, IDUKKI-685 584.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 25-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1: TRUE COPY OF THE PLAINT, O.S NO.344/2014 BEFORE THE MUNSIFF'S COURT, THODUPUZHA DATED 20.10.2014.**
- EXT.P2: TRUE COPY OF THE COMPROMISE DECREE DATED 29.10.2014 IN O.S NO.344/2014 BEFORE THE MUNSIFF'S COURT, THODUPUZHA.**
- EXT.P3: TRUE COPY OF THE JUDGMENT DATED 29.10.2014 IN O.S NO.344/2014 BEFORE THE MUNSIFF'S COURT, THODUPUZHA.**
- EXT.P4: TRUE COPY OF THE DECREE DATED 29.10.2015 IN O.S NO.344/2014 BEFORE THE MUNSIFF'S COURT, THODUPUZHA.**
- EXT.P5: TRUE COPY OF THE APPLICATION, I.A NO.445/2015 DATED 06.03.2015 IN O.S NO.344/2014 BEFORE THE MUNSIFF'S COURT, THODUPUZHA.**
- EXT.P6: TRUE COPY OF THE ORDER DATED 22.08.2015 IN I.A NO.445/2015 IN O.S NO.344/2014 BEFORE THE MUNSIFF'S COURT, THODUPUZHA.**
- EXT.P7: TRUE COPY OF THE DOCUMENT DATED 05.01.2011.**
- EXT.P8: TRUE COPY OF THE DOCUMENT DATED 09.10.2012.**
- EXT.P9: TRUE COPY OF THE DOCUMENT DATED 06.09.2013.**
- EXT.P10: TRUE COPY OF THE DOCUMENT DATED 10.10.2013.**
- EXT.P11: TRUE COPY OF THE CONSENT DEED BEFORE THE THODUPUZHA MUNICIPALITY DATED 12.11.2013.**
- EXT.P12: TRUE COPY OF THE CHIEF AFFIDAVIT DATED 06.07.2015 IN I.A NO.445/2015.**
- EXT.P13: TRUE COPY OF THE PLAINT, O.S NO.97 OF 2015 BEFORE THE MUNSIFF'S COURT, THODUPUZHA DATED 16.03.2015.**
- EXT.P14: TRUE COPY OF THE COMMISSIONER'S REPORT DATED 29.10.2014.**
- EXT.P15: TRUE COPY OF THE ARGUMENT NOTE SUBMITTED BY THE COUNSEL DATED 18.08.2015.**
- EXT.P16: TRUE COPY OF THE RELEVANT PORTION OF THE WRIT PETITION, WP(C) NO.10447 OF 2015 BEFORE THE HON'BLE HIGH COURT OF KERALA ERNAKULAM DATED 28.03.2015.**

OP(C).No. 2654 of 2015 (O)

**EXT.P17: TRUE COPY OF THE JUDGMENT DATED 23.06.2015 IN
W.A.NO.846 OF 2015 BEFORE THE HON'BLE HIGH COURT OF
KERALA, ERNAKULAM.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

K.ABRAHAM MATHEW J.

O.P.(C) No.2654 of 2015

Dated this the 25th day of November, 2015

JUDGMENT

Petitioner was the defendant in O.S.No.344 of 2014 on the file of Munsiff, Thodupuzha. The respondent filed a suit against him for a perpetual injunction restraining him from trespassing into the plaint schedule property and interfering with his right to put up any construction or conducting business in fish therein. The plaint schedule land belongs to the respondent. He alleged in the plaint that he gave license to the petitioner to conduct business in fish in the plaint schedule property. The term of license expired on 10.9.2014. On the expiry of the term the petitioner vacated the property and left the place; thereafter, the respondent has been in possession of the property; but now he is making attempts to trespass into it. On the basis of the allegations the respondent prayed for the reliefs mentioned above. On the basis of Ext P2 compromise entered into between the parties, the trial court passed a compromise decree as seen from Ext P4 judgment. Under the compromise the petitioner was allowed to do business in the property till 25.3.2015. On 16.3.2015 he filed Ext P5 application to set aside the compromise decree alleging that it was obtained by force and fraud. By the impugned Ext P6 order the learned Munsiff has dismissed it. Its legality is challenged.

2. Heard.

3. The contention of the petitioner is not much relevant in this proceedings. But it may be mentioned that the case set up by him in this Original Petition is that he was a lessee of the plaint schedule property. Under Section 74 of the Kerala Land Reforms Act lease of land is prohibited in Kerala. He has also a case that if the transaction is treated as a license he is entitled to the benefit of Section 60(b) of the Easement Act. The agreement between the parties is produced before the court. The agreement specifically mentions that if it is necessary to make any permanent construction on the land for the purpose of the business of the petitioner, it will be made by the respondent. So the petitioner cannot be heard to say that acting upon the license he has made permanent construction in the property.

4. In Ext P5 application the vitiating circumstances alleged is that at the instance of the respondent, who is a police constable, the Sub Inspector of Police summoned the petitioner to police station and forced him to sign certain blank papers and the petitioner later understood that on these signed blank papers the compromise petition was written up. This cannot be accepted for a moment. Because Ext P2 compromise petition shows that the petitioner was represented by a counsel and it was filed through the counsel. In Ext P5 application there is no whisper how the

petitioner's counsel happened to put his signature in the compromise application. For this reason alone the petitioner's application could have been dismissed.

5. Ext P2 compromise allowed the petitioner to continue to occupy the property till 25.3.2015. He filed Ext P5 application to set aside the compromise decree on 16.3.2015. The intention is very clear. The petitioner has no bonafides. The learned Munsiff rightly dismissed Ext P5 application. No interference is warranted.

In the result, this Original Petition is dismissed. Learned counsel for the petitioner submits that the petitioner may be granted three months time to vacate the property.

I think in the circumstances of the case the petitioner may be given time till 31.1.2016 to vacate the property. Within seven days he shall file an affidavit in this court undertaking to vacate the property and to put the respondent in possession of the property on or before 31.1.2016, failing which the executing court shall immediately evict him.

Sd/-

K.ABRAHAM MATHEW
JUDGE

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/True copy/

P.S.to Judge