

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP(C).No. 2774 of 2015 (O)

O.S.NO.824/2012 OF ADDITIONAL SUB COURT, IRINJALAKUDA

PETITIONER(S)/1ST PETITIONER/1ST DEFENDANT :

**SREE AYYAPPA BHAJANA SAMITHI,
REPRESENTED BY ITS PRESIDENT SHINIT,
METHALAPADAM DESOM, METHALA VILLAGE,
KODUNGALLOOR TALUK.**

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA**

RESPONDENT(S)/RESPONDENTS/PLAINTIFFS :

**1. THRI PURA,
W/O.THERUVIL BALAN, TKS PURAM DESOM, METHALA VILLAGE,
KODUNGALLOOR TALUK-680 664.**

**2. BALAN,
S/O.THERUVIL BALAN, TKS PURAM DESOM, METHALA VILLAGE,
KODUNGALLOOR TALUK-680 664.**

**BY DR.K.P.SATHEESAN (SENIOR ADVOCATE)
ADVS. SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.K.SUDHINKUMAR**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 17-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP(C).No. 2774 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE JUDGMENT OF THE ADDITIONAL SUB COURT,
IRINJALAKUDA IN O.S.NO.824/2012 DATED 11.11.2014.**

**EXHIBIT P2: TRUE COPY OF THE REPORT SUBMITTED BY THE ADVOCATE
COMMISSIONER IN I.A.NO.2195/2014 IN O.S.NO.2913/2014 IN
THE MUNSIFF'S COURT, KODUNGALLUR DATED 16.12.2014.**

**EXHIBIT P3: TRUE COPY OF THE ORDER PASSED BY THE ADDITIONAL SUB
COURT, IRINJALAKUDA IN CHEQUE APPLICATION NO.132/2014-15
IN O.S.NO.824/2014 DATED 23.01.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. ABRAHAM MATHEW, J.

O.P.(C)No. 2774 of 2015

Dated this the 17th day of December, 2015

J U D G M E N T

The petitioner was the first defendant in O.S.824 of 2012 instituted by the respondents for perpetual and mandatory injunction. After the trial the court decreed the suit which was in respect of an immovable property. The petitioners claim that they had a right to conduct some ceremonies in the property in connection with the festival of the nearby temple was rejected by the court. But later the trial court allowed the petitioner to use the property for certain purposes in connection with the festival on condition that they would not cause any damage to the property or commit any mischief therein and that they would deposit Rs.1,00,000/- (Rupees one lakh only) as security for it. On the allegation that the petitioner caused damage and committed mischief in the property the respondents have filed OS 2913 of 2014 before the Munsiff Court, Kodungalloor for compensation. The amount

claimed is Rs.1,25,000/- (Rupees one lakh twenty five thousand only) Meanwhile, in OS.824 of 2012 the petitioner filed a cheque application to withdraw the amount deposited as security. By Ext.P3 impugned order the learned Sb Judge has dismissed it. This is questioned in this OP.

2. Heard.

3. The amount was deposited as a security. Now the commission report prima facie indicates that damage was caused and mischief was committed in the property. Final decision can be taken only after the trial of O.S.2913 of 2014. Since the amount was deposited to ensure that no damage would be caused and no mischief was committed in the property and prima facie there has been breach of the conditions it cannot be released before the disposal of the suit filed for compensation. I do not find anything wrong in the impugned order. It is submitted that in OS.2913 of 2014 an application had been filed for attachment of this amount and without passing any order that application was closed because of the rejection of the cheque application which is the subject matter of this proceedings. In these circumstances, I am inclined to direct the learned Munsiff to revive the said application for

attachment and pass appropriate orders on it.

In the result this OP is disposed of with a direction to the learned Munsiff, Kodungalloor to reopen IA 2983 of 2014 in O.S.2913 of 2014 and pass appropriate orders on it not withstanding the rejection of cheque application 132/14-15 in OS.824 of 2012 of Sub Court, Irinjalakuda.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

//True Copy//

PA to Judge