

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

OP(C).No. 1699 of 2014 (O)

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CMA. NO.4/2014 OF SUB COURT, NEDUMANGAD.**

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PETITIONER(S):

- 1. RAMESH, S/O.UNNI, AGED 42 YEARS,
T.C. 12/2215, MADATHUVILAKATHU MURI,
GOWREESA PATTOM, PATTOM (P.O),
PATTOM VILLAGE, THIRUVANANTHAPURAM.**
- 2. RAJANI, W/O.RAMESH, AGED 41 YEARS,
T.C. 12/2215, MADATHUVILAKATHU MURI,
GOWREESA PATTOM, PATTOM (P.O),
PATTOM VILLAGE, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.RAM MOHAN.G.,
SRI.G.P.SHINOD,
SRI.MANU V.,
SRI.GOVIND PADMANAABHAN.**

RESPONDENT(S):

**GRACY YOHANAN, W/O.K.C. YOHANAN,
FROM GRACE HOUSE, GRACE GARDENS,
VETTIKONAM, MANIKANDESWARAM (P.O),
PEROORKADA VILLAGE, THIRUVANANTHAPURAM,
PRESENTLY RESIDING AT K.P. 9/260-A, REVATHY HOUSE,
KUNNATHUMPPARA, VATTAPPARA (P.O),
THIRUVANANTHAPURAM.**

**BY ADVS. SRI.S.VINOD BHAT,
SRI.R.PADMAKUMAR,
SRI.LEGITH T.KOTTAKKAL.**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 02-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P-1: A TRUE COPY OF THE PLAINT IN O.S.NO.933 OF 2013 ON THE FILES OF THE PRINCIPAL MUNSIFF COURT, NEDUMANGADU.
- EXT.P-2: A TRUE COPY OF THE AGREEMENT DATED 09.05.2013
- EXT.P-3: A TRUE COPY OF THE I.A.NO.4498 OF 2013 IN O.S.NO.933/2013 ON THE FILES OF THE PRINCIPAL MUNSIFF COURT, NEDUMANGADU.
- EXT.P-4: A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT HEREIN TO EXHIBIT P3 PETITION
- EXT.P-5: A TRUE COPY OF THE COMMISSION REPORT DATED 26.11.2013 FILED BY THE COMMISSIONER IN O.S.NO.933 OF 2013 BEFORE THE PRINCIPAL MUNSIFF COURT, NEDUMANGADU.
- EXT.P-6: A TRUE COPY OF I.A. NO.4680 OF 2013 IN O.S.NO.933 OF 2013 FILED BEFORE THE PRINCIPAL MUNSIFF COURT, NEDUMANGADU.
- EXT.P-7: A TRUE COPY OF THE COUNTER FILED BY THE RESPONDENT TO EXHIBIT P6 APPLICATION.
- EXT.P-8: A TRUE PHOTOCOPY OF THE COMMON ORDER DATED 20.12.2013 IN I.A. NO.4680/2013 AND I.A.NO.4498/2013 IN O.S.NO.933/2013 OF THE PRINCIPAL MUNSIFF COURT, NEDUMANGADU.
- EXT.P-9: A TRUE COPY OF THE JUDGMENT DATED 24.02.2014 IN C.M.A. NO.4/2014 OF THE SUB COURT, NEDUMANGADU.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

P. BHAVADASAN, J.

O.P.(C) No. 1699 of 2014

Dated this the 2nd day of February, 2015.

JUDGMENT

Faced with the divergent findings of the courts below, the plaintiffs before the Principal Munsiff's Court, Nedumangad have come up with this Original Petition under Article 227 of the Constitution of India.

2. Most of the facts are not in dispute. The property in question and the building belonged to the plaintiffs. They agreed to sell it to the defendant for a total consideration of Rs.68,00,000/- and an agreement for sale was entered into on 9.5.2013 fixing an outer limit of four months for execution of the sale deed. It is not in dispute that various payments were made and the total amount paid would come to Rs.27,50,000/-. The controversy centers around the question as to who was in possession as on the date of the filing of the suit, i.e., 20.11.2013.

3. The plaintiffs would say that the defendant has no case that at the time of entering into agreement for sale, the defendant was actually put in possession. The case of the plaintiffs is that they had rescinded the contract by sending a notice on 28.10.2013 and thereafter apprehending trespass by the defendant, they laid the suit on 20.11.2013. Along with the suit, they filed I.A. for interim injunction which was not granted at that point of time. The further case of the plaintiffs is that soon thereafter, to be more precise, on 22.11.2013, the defendant trespassed into the building and occupied the same. They had therefore moved I.A. 4680 of 2013 for a mandatory injunction to direct the defendant to vacate the premises and hand over possession to the plaintiffs.

4. The defendant entered appearance and contested both the applications. According to her,

possession was handed over and she was residing there. She therefore contended that the plaintiffs are not entitled to any relief.

5. I.A. 4498 of 2013 filed for temporary injunction and I.A. 4680 of 2013 for mandatory injunction were heard and disposed of by a common order by the trial court. The trial court formed the opinion that the case put forward by the plaintiffs is more probable and therefore, allowed I.A. 4680 of 2013 and granted injunction as per I.A. 4498 of 2013 resulting in directing the defendants to vacate the premises and hand over possession to the plaintiffs.

6. That drove the defendant to the lower appellate court to file C.M.A. 4 of 2014 particularly against the order in I.A. 4680 of 2013 whereby mandatory injunction was granted against the defendant asking her to vacate the premises.

7. The appellate court, on an independent consideration of the materials, chose to differ from the views expressed by the trial court and allowed the appeal dismissing the application for mandatory injunction.

8. Learned counsel appearing for the petitioners before this Court assailed the finding of the appellate court on the ground that the court below has not adverted to the real issue involved in the case and has considered irrelevant aspects. The court below was greatly impressed by the fact that there is no prayer for mandatory injunction in the suit and therefore granting an interim mandatory injunction is travelling beyond the scope of the suit. Learned counsel went on to point out that the court below completely lost sight of the fact that the definite case of the plaintiffs was that after the institution of the suit, the defendant had trespassed into the property and if that be so, the court below was entitled to restore status quo and in that process

can order the defendant to vacate the premises. This crucial aspect has been lost sight of and therefore, the order cannot be sustained.

9. Shri. Vinod Bhat, learned counsel for the respondent on the other hand pointed out that the appellate court has assessed the materials before it and came to the conclusion that it is not possible to come to the conclusion that the defendant has trespassed into property as alleged by the plaintiffs and at any rate granting mandatory injunction at this point of time will not be in the interests of justice.

10. There is much to be said on either side. Even going by the plaintiffs' case, the defendants have trespassed into and occupied the property on 22.11.2013 and we are in January, 2015. There is no case for the plaintiffs as of now that the defendant had vacated the premises and they were in possession of the premises. It will not be proper for

this Court to enter a finding regarding real issue involved in the suit, as that will be to the prejudice of the parties. The safe course for this Court would be to direct the suit to be disposed of within a specified time so that the right of the parties remain in tact to be adjudicated before the appropriate forum.

11. This Court is of the view that reversing the order of the appellate court and restoring the order of the trial court will cause further confusion and create more problems.

In the result, while dismissing this Original Petition by confirming the order of the lower appellate court, the trial court is directed to dispose of the suit as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment. It is made clear that consideration of any petition filed by either of the parties which the court feels necessary for the

proper adjudication of the suit shall not be declined merely because time limit is fixed by this Court. It is made clear that none of the observations made by the trial court or the lower appellate court while considering the interlocutory applications or this Court while disposing of this petition shall stand in the way of the trial court disposing of the suit in accordance with law and in the light of the evidence adduced in the case.

sb.

P. BHAVADASAN,
JUDGE