

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

OP(C).No. 1703 of 2014 (O)

I.A. 158/2013 IN OS 210/2011 of SUB COURT, KATTAPPANA

PETITIONER/RESPONDENTS/DEFENDANTS 1 & 2 :

- 1. V.MANIVANNAN, AGED 35 YEARS,
S/O. LATE K.VELLACHAMI KONAR,
C/O. R.S. RAMSWAMI AND PITCHAIMMAL,
RESIDING AT DOOR NO. 343, POOJARI COMPOUND,
NETHAJI CROSS STREET, JAIHINDPURAM, MADURAI
TAMILNADU.**
- 2. V.MANIKANDAN, AGED 40 YEARS,
S/O. K.VELLACHAMI KONAR, RESIDING AT DOOR NO. 3A,
E.B.COLONY, MUTHURAMALINGAPURAM, MADURAI,
TAMILNADU STATE.**

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS/PETITIONERS/PLAINTIFFS :

- 1. CHINNATHAMPI, AGED 60 YEARS,
S/O. MUTHU, SARASWATHY ESTATE, HOUSE NO. III/20,
CHEMMANNAR P.O., PANAKULAM KARA, UDUMBANCHOLA VILLAGE,
UDUMBANCHOLA TALUK.**
- 2. M.C.AMUTHA, AGED 30 YEARS,
W/O. S.SEKHAR, RESIDING AT SP 59, 1ST FLOOR
STREET NO. III, SECTOR I, CHENNAI-78.**
- 3. C.SARASWATHY, AGED 51 YEARS
W/O. M.CHINNATHAMPI, SARASWATHY ESTATE
HOUSE NO. III/620, CHEMMANNAR P.O., PANAKULAM KARA
UDUMBANCHOLA VILLAGE, UDUMBANCHOLA TALUK.**

**R1 BY ADVS. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 18-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: THE COPY OF THE PLAINT IN O.S.NO. 210/2011 BEFORE THE SUB COURT, KATTAPPANA.
- EXHIBIT P2: THE RELEVANT EXTRACT OF THE TAMIL DAILY DATED 23-8-2012 SHOWING THE PENDENCY OF EXHIBIT P1-SUIT.
- EXHIBIT P2(A): THE TYPED COPY OF THE TRANSLATION OF EXHIBIT P2- PAPER PUBLICATION.
- EXHIBIT P3: THE COPY OF THE COMPROMISE DATED 24-11-2011 ENTERED IN BETWEEN THE PLAINTIFFS AND THE DEFENDANTS.
- EXHIBIT P4: THE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS/PETITIONERS HEREIN IN O.S. 210/2011 BEFORE THE SUB COURT, KATTAPPANA.
- EXHIBIT P5: THE COPY OF THE I.A.NO. 158/2013 IN O.S. 201/2011 BEFORE THE SUB COURT, KATTAPPANA.
- EXHIBIT P6: THE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONERS AGAINST EXHIBIT P5 PETITION.
- EXHIBIT P7: THE COPY OF THE ARGUMENT NOTE FILED BY THE COUNSEL FOR THE PLAINTIFFS IN I.A.NO. 158/2013 IN O.S. 210/2011 BEFORE THE SUB COURT, KATTAPPANA.
- EXHIBIT P8: TRUE COPY OF THE ORDER DATED 20-2-2014 IN I.A.NO. 158/2013 IN O.S. 210/2011 BEFORE THE SUB COURT, KATTAPPANA.
- EXHIBIT P9: COPY OF THE IA NO. 952/2014 IN OS NO. 210/2011 BEFORE THE SUB COURT, KATTAPPANA

RESPONDENT(S)' EXHIBITS :

- EXT.R1(a): COPY OF THE CERTIFIED COPY OF THE POSTAL ENDORSEMENT ON THE COVER CONTAINING NOTICES/SUMMONS ON THE DEFENDANTS IN OS NO. 210 OF 2011 ON THE FILE OF THE HONOURABLE SUB COURT, KATTAPPANA

//TRUE COPY//

P.A.TO JUDGE

bp

B. KEMAL PASHA, J.

.....
O.P.(C) No.1703 of 2014
.....

Dated this the 18th day of August, 2015

J U D G M E N T

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Ext.P8 order passed in IA No.158/2013 in OS No.210/2011 of the Subordinate Judge's Court, Kattappana is under challenge.

2. Originally, OS No.210/2011 was filed on 22.09.2011 by the plaintiffs, who are respondents herein, for a decree of perpetual injunction restraining the defendants and their men from trespassing into the plaint schedule properties. The plaint schedule properties is a cardamom estate having an extent of 9.25 acres in Udumbanchola village. The plaint A and B schedule properties are situated as a compact plot. The 3rd plaintiff, who is the wife of the 1st plaintiff, had obtained patta in respect of the B schedule property. According to the plaintiffs, they were in absolute possession and enjoyment of plaint A and B schedule

properties.

3. While so, according to the plaintiffs, there were attempts from the part of their other relatives to commit trespass into the properties with the active aid and assistance of the local leaders of the CPI(M) political party under the leadership of the Member of the Legislative Assembly representing Udumpanchola. It was in that context, the suit was filed. An IA was filed along with the suit for an order of temporary injunction. An order of temporary injunction as prayed for was granted, which is still in force.

4. On 23.09.2011, the Commissioner appointed by the court below had visited the property and prepared a mahazar and report. The report also shows that the plaintiffs were in possession of the property as on 23.09.2011. The plaintiffs are hailing from Tamil Nadu. According to them, the 1st plaintiff knows Tamil and English language and he does not know Malayalam. The 3rd plaintiff, who is the wife of the 1st plaintiff, is virtually illiterate. According to the

plaintiffs, on 11.01.2012, the petitioners herein, with the active aid and assistance of the local leaders of the CPI(M) political party, had committed trespass into the property and reduced some portions of the scheduled properties into the possession of these petitioners. An application for the issue of a Commission was filed by the plaintiffs.

5. The Commissioner again visited the property and has filed a report, which reveals the changes carried out by the petitioners in the property. Thereafter, the plaintiffs filed IA No.158/2013 before the court below seeking an order directing the petitioners herein to restore status quo anti with regard to the property. A counter was filed by the petitioners resisting Ext.P5 IA. The court below, through Ext.P8 order, has allowed the IA, thereby ordering restoration of the status quo anti based on the Commissioner's report dated 04.10.2011 filed by the Commissioner after visiting the property on 23.09.2011.

6. Heard learned counsel for the petitioners and

learned counsel for the respondents.

7. Learned counsel for the petitioners has argued that immediately after the filing of the suit, without any information regarding the suit, the parties had willingly entered into 'a compromise', which was reduced into writing as Ext.P3 and based on that 'compromise', the parties had divided the properties and the petitioners are in possession of a portion of the properties.

8. On going through Ext.P3, it seems that it has no legal sanctity at all. It is not a registered document. It cannot be treated as a contract also, as the same is not supported by consideration. Ext.P3 cannot be treated as a document of transfer. As the same is not a registered document, it cannot create a transfer of immovable property within the meaning of the Transfer of Property Act as well as the Registration Act. It seems that it is an arrangement made by somebody at the instance of some persons attached to the CPI(M) political party. It is manifest from Ext.P3 that it

was nothing but an attempt to snatch away the properties possessed by the plaintiffs.

9. Ext.P3 will aid the plaintiffs in the case as it has been clearly admitted in Ext.P3 by these petitioners, who are also parties to Ext.P3, that till the execution of Ext.P3, plaintiffs 1 and 3 were in absolute possession and enjoyment of all these properties. Through Ext.P3, an attempt was made to give away more than half of the properties to these petitioners. As earlier pointed out, Ext.P3 cannot be relied on for any purpose other than for taking the admission in it with regard to the possession of the properties by plaintiffs 1 and 3.

10. The present argument of the learned counsel for the petitioners is that it was based on Ext.P3 that they have reduced the portions of the properties to their possession. Still, there is no attempt to get the order of injunction passed by the court below, vacated. That itself reflects the attitude of the petitioners towards the maintenance of law and order.

By force exerted by a political party, they have created Ext.P3 and has violated the order of temporary injunction passed by the court below. Still, without making any attempt to get the injunction order vacated, they are harping upon Ext.P3 and claiming possession of the property by virtue of it. The petitioners have taken the aid of a political party to violate the order passed by a court of law. The matter has to be viewed very seriously.

11. When the court below had found the possession of the properties with the plaintiffs and passed an order of temporary injunction, the petitioners ought to have obeyed the order of injunction unless and until it is vacated. At the same time, overlooking the orders passed by the court below and with utter disregard to the said order, they have violated the order, trespassed into the property, and has created alterations and modifications in the property, and reduced the property into their possession. In such context, they are bound to restore status quo anti as on 23.09.2011

by putting the plaintiffs in possession of the properties. Ext.P3 is dated 24.11.2011. Even according to the petitioners as per Ext.P3, plaintiffs 1 and 3 were in absolute possession and enjoyment of the property as on 24.11.2011. Therefore, they will have to restore possession of the property to the plaintiffs.

12. The petitioners have forwarded a contention that the order of temporary injunction was not served on them. It is difficult to swallow it. Whatever it is, it is their admitted case in Ext.P3 that plaintiffs 1 and 3 were in absolute possession and enjoyment of the properties as on 24.11.2011. Even though they have got a case that they were not served with the order of temporary injunction passed by the court below, it is evident that at least subsequently they have come to know about it. When they have reduced the properties into their possession by violating the said order of temporary injunction passed by the court below, they are bound to restore status quo anti.

Matters being so, there is absolutely nothing to interfere with Ext.P8 order passed by the court below. The petitioners are directed to restore possession of the property to the plaintiffs, forthwith.

O.P.(Civil) is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/18/08

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PA to Judge