

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

OP(C).No. 1817 of 2014 (O)

(OS 255/2012 of MUNSIF COURT, PUNALUR)

PETITIONERS:

1. BABU, AGED 52 YEARS, S/O. MADHAVAN,
THOTTUMKARA PUTHEN VEEDU, KINARUM MUKKU,
MANALIL, AYIRANALLOOR VILLAGE,
FROM PULIMOOTTIL VEEDU , CHAZHIKULAM, AYILARA (PO)
AYILARA KARA, AYIRANALLOOR VILLAGE, PATHANAPURAM TALUK,
KOLLAM.

2. CHANDRIKA, W/O.BABU, AGED 49 YEARS,
THOTTUMKARA PUTHEN VEEDU, KINARUM MUKKU
MANALIL, AYIRANALLOOR VILLAGE
FROM PULIMOOTTIL VEEDU, CHAZHIKULAM, AYILARA (PO),
AYILARA KARA, AYIRANALLOOR VILLAGE, PATHANAPURAM TALUK,
KOLLAM.

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

RESPONDENT:

INDIRA
D/O.KUNJI, THOTTUMKARA PUTHEN VEEDU, KINATTUMUKKU MURI,
MANALIL (PO), AYIRANALLOOR VILLAGE, PATHANAPURAM TALUK,
KOLLAM.

BY ADV. SRI.K.S.MOHAMED HASHIM.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 11-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 1817 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 - A TRUE COPY OF THE PLAINT IN OS NO.255 OF 2012 ON THE FILES OF THE MUNSIFF COURT, PUNALUR.
- EXT.P2 - A TRUE PHOTOCOPY OF THE COMMISSION REPORT FILED IN OS NO.255 OF 2012 BEFORE THE MUNSIFF COURT, PUNALUR.
- EXT.P3 - A TRUE COPY OF THE ORDER DATED 08-02-2013 PASSED BY THE MUNSIFF COURT, PUNALUR IN IA NO.1480 OF 2012 IN OS NO.255 OF 2012.
- EXT.P4 - A TRUE COPY OF THE IA NO.1078 OF 2014 IN OS NO.255 OF 2012 FILED BEFORE THE MUNSIFF COURT, PUNALUR.
- EXT.P5 - A TRUE COPY OF THE OBJECTIONS FILED BY THE RESPONDENT IN IA NO.1078 OF 2014 IN OS NO.255 OF 2012 BEFORE THE MUNSIFF COURT, PUNALUR.
- EXT.P6 - A TRUE COPY OF THE ORDER DATED 27-6-2014 IN IA NO.1078 OF 2014 IN OS NO.255 OF 2012 PASSED BY MUNSIFF COURT, PUNALUR.

RESPONDENT(S)' EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.1817 OF 2014

Dated this the 11th day of February, 2015.

J U D G M E N T

Aggrieved by the order dated 27.06.2014 in I.A.No.1078/2014 in O.S.No.255/2012, petitioners who are defendants in the suit have come up before this Court with this original petition.

2. The plaintiff in the suit executed a settlement deed in favour of the defendants. The suit was laid for a declaration that the cancellation deed executed by the plaintiff, cancelling the settlement deed in favour of the defendants, is valid. In the suit, an application was filed by the plaintiff praying for an interim order of injunction to the effect that possession of the property shall not be interfered with. The said application was disposed of by the court below by Ext.P3 order. The operative portion of Ext.P3 reads as follows:

“Point from Ext.A1 it is clear that the petitioner transferred her right to respondents reserving her life

interest over Plaint schedule property. Later she executed Ext.A2 while rendering argument respondents counsel placed 2010(s) KLT SN 10 and 2011 (4) KLT SN 107, in which it was held by hon'ble high court that the cancellation deed cannot be made unilaterally. In 2010(s) KLT SN 10 it is stated that as no right of revocation was reserved with executing she couldn't revoke it unilaterally. Similar fact is here in this case. In Ext.A1 no such condition is their. Hence Ext.A2 is not valid one. So the respondents still have right. The only prayer sought for is to protect the pensure enjoyment and possession of petition schedule property by plaintiff. She has life interest over property. That right is to be protected. Hence order in this IA dtd 19/6/12 is made absolute. Still the respondent can enjoy the property without distributing the life interest of the petitioner".

3. The petitioners before this Court pointed out that they have put up a structure and completed a substantial portion of the same and only the roof remains to be laid to complete the building. They pray that they may be permitted to complete the construction subject to the result of the suit.

4. Serious objections were taken by the learned counsel for the respondents to the said prayer on the ground that if

ultimately it is found that petitioners have no right over the property, respondents may be fastened with liability. It is submitted that if this Court is inclined to grant permission to do so, that should be purely at the risk of the petitioners and that they may not be permitted to claim any right on that basis.

5. In the light of the fact that substantial portion of the construction has been completed and since the petitioners are willing to make construction at their risk and cost without prejudice to the right of the respondent herein, there is no reason as to why permission should not be granted.

The petitioners before this Court are permitted to complete the structure subject to the condition that the construction shall be done at their risk and cost and they shall not claim any right over the property on the basis of the construction so made and the respondent herein shall not be liable to pay any value or cost for the building.

Sd/-

**P.BHAVADASAN
JUDGE**

smp