

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

OP(C).No. 1992 of 2014 (O)

(I.A.NO.4371/2013 IN O.S.NO.654/2012 OF ADDITIONAL SUB COURT, IRINJALAKUDA)

PETITIONER/PLAINTIFF/RESPONDENT :

JOSEPH, AGED 55 YEARS,
S/O.VEBLIYATH ANTONEY, DHANYA NAGAR DESOM,
POTTA VILLAGE, MUKUNDHAPURAM TALUK,
(NOW CHALAKUDY TALUK), THRISSUR.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENT/PLAINTIFF/2ND DEFENDANT :

ALPHONSA, AGED 57 YEARS,
W/O.VELIYAN JOHNY, DHANYA NAGAR DESOM, POTTA VILLAGE,
MUKUNDHAPURAM TALUK (NOW CHALAKUDY TALUK),
THRISSUR.

BY ADVS. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA
SRI.K.D.SREEVISAKH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

sts

OP(C).No. 1992 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- A COPY OF THE PLAINT IN OS NO.654/2012 DTD 22/8/2012
- P2:- A TRUE COPY OF THE OBJECTION AND COUNTER CLAIM FILED BY THE 2ND DEFENDANT DTD 2/4/2013
- P3:- A TRUE COPY OF THE REPLICATION FILED BY THE PLAINTIFF DTD 30/10/2013
- P4:- A TRUE COPY OF THE ABOVE APPLICATION IN IA NO.4371/2013 IN OS NO. 654/2012 DTD 21/10/2013
- P5:- TRUE COPY OF THE OBJECTION DTD 30/10/2013
- P6:- A TRUE COPY OF THE ORDER IN IA NO.4371/2013 IN OS NO.654/2012 DTD 8/8/2014

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

sts

B. KEMAL PASHA, J.

.....
O.P.(C) No. 1992 of 2014
.....

Dated this the 14th day of July, 2015

J U D G M E N T

Ext.P6 order is under challenge. Petitioner is the plaintiff before the court below. According to the plaintiff, he had invested huge amounts for installing the sawmill involved in the suit, and he was running the same, even though the licence was procured in the name of his sister, who is the 2nd defendant. First defendant is the husband of the 2nd defendant. The property belongs to the first defendant. According to the 2nd defendant, the plaintiff being her brother was permitted to reside in the building in the property and he was employed by her as an employee at the sawmill. It has come out that financial nursing was

obtained from the KFC for running the sawmill. Presently, the sawmill cannot function as its licence could not be renewed, since the licence was procured only after the year 2000. It could be renewed only with the No Objection Certificate from the Forest Department. The said certificate could not be obtained and therefore, all the machinery in the sawmill are now lying idle, and are in the verge of natural destruction.

2. Heard learned counsel for either side.

3. The 2nd defendant filed IA 4371 of 2013 before the court below for permission to sell the movables in the scheduled building including the machinery of the sawmill. It seems that through Ext.P6, the court below has allowed the request for appointment of a Commissioner to supervise the sale of movables and the machinery. The court below has ordered that the sale proceeds shall be deposited before the court below within five days of such sale.

4. The said order is under challenge. The learned

counsel for the petitioner has pointed out that relief B sought for by him in the plaint includes an injunction as against the respondent herein from interfering with the running of the sawmill, and also from taking away the machinery of the sawmill. The argument of learned counsel for the petitioner is that through Ext.P6, the court below has in effect ordered removal of the machinery of the sawmill thereby denying him relief B.

5. The learned counsel for the respondent has pointed out that still the liability of the loan with KFC is in the name of the respondent and she has to find out means to repay the amounts. An amount of ₹.11 lakhs was obtained as loan from the KFC. Through Ext.P6 order, the court below has not granted any benefit to any of the parties, whereas the court below has ordered the sale of the movables and machinery, and if not, it would result in deterioration of the movables, which in turn will result in huge loss to the person who is the owner of such movables.

The court below has not entered a finding as to who is the person entitled to get the sale proceeds and that is the reason why the court below has ordered the deposit of the sale proceeds before the court below within five days of the sale. There is absolutely no irregularity, illegality or jurisdictional error in the procedure adopted by the court below in passing Ext.P6 order. Ext.P6 order is not liable to be interfered with.

In the result, this Original Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge