

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

OP(C).No. 2193 of 2014 (O)

**ORDER DTD. 11.8.2014 IN IA.NO.4761/2014 IN IA.NO.5049/2012 IN OS.NO. 1059/2012 OF
MUNSIFF COURT, CHAVAKKAD**

.....

PETITIONER(S)/3RD RESPONDENT/3RD DEFENDANT:

**PAVANAN, AGED 49 YEARS,
S/O.THAYYIL NARAYANAN, NHAMANGHAT DESOM,
VAYALATHOOR AMSOM, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.RAJIT

RESPONDENT(S)/1ST PETITIONER & RESPONDENTS 1,2,4/PLAINTIFF & DEFENDANTS

1,2,4:

- 1. MADHAVAN,
S/O.AYYAPPAKUTTY, KATTISSERY HOUSE,
NHAMANGHAT DESOM,VAYALATHOOR AMSOM,
CHAVAKKAD TALUK, THRISSUR DISTRICT - 680 506.**
- 2. PARIMALAM,
W/O.THAYYIL VELAYUDHAN, VAILATHUR AMSOM,
NJAMANENGAD DESOM, CHAVAKKAD TALUK - 680 506.**
- 3. RADHAKRISHNAN,
S/O.THAYYIL NARAYANAN, VAILATHUR AMSOM,
NJAMANENGAD DESOM, CHAVAKKAD TALUK - 680 506.**
- 4. VELAYUDHAN,
S/O.THAYYIL NARAYANAN, VAILATHUR AMSOM,
NJAMANENGAD DESOM, CHAVAKKAD TALUK - 680 506.**

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 03-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(C).No. 2193 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1- TRUE COPY OF THE PLAINT O.S.NO.1059/2012 BEFORE THE MUNSIF COURT, CHAVAKKAD.

EXT. P2- TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT IN O.S.NO.1059/2012.

EXT. P3- TRUE COPY OF THE COMMISSION REPORT.

EXT. P4- TRUE COPY OF THE PETITION IN IA.NO.4761/2014 IN I.A.NO.5049/2012 IN O.S.NO.1059/2012 OF THE MUNSIF COURT, CHAVAKKAD.

EXT. P5- TRUE COPY OF THE OBJECTION FILED BY THE DEFENDANTS TO EXT.P4.

EXT. P6- TRUE COPY OF THE ORDER DATED 16.9.2014 IN O.P(C)NO.2093/2014.

EXT. P7- TRUE COPY OF THE ORDER THE ORDER DATED 11.8.2014 IN I.A.NO.4761/2014 IN I.A.NO.5049/2012 IN O.S.NO.1059/2012 OF THE MUNSIF COURT, CHAVAKKAD.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B.KEMAL PASHA, J.

.....
O.P.(C) No.2193 of 2014

.....
Dated this the 3rd day of June, 2015

J U D G M E N T

What is challenged in this original petition is Ext.P7 order passed by the court below in I.A.No.4761/2014 in IA No.5049/2012 in O.S.No.1059/2012. It seems that Ext.P5 order is in the form of a temporary mandatory injunction. According to the learned counsel for the petitioner, the petitioner is seriously prejudiced as the court below has failed to consider Ext.P5 objections filed by the petitioner as against the Commissioner's report. It seems that the court below has noted in Ext.P7 that no counter has been filed. Therefore the argument is that a grave error has been crept in the order passed by the court below, which has caused

serious prejudice to the petitioner.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. It has come out that the petitioner had filed Ext.P5 objections as against the Commissioner's report. The court below has failed to take note of that fact while passing Ext.P7 and the court below has passed Ext.P7 with an observation that no counter has been filed. When such a grave error has been crept in the order, Ext.P7 order is liable to be set aside and the matter is liable to be heard afresh by the court below.

4. In the result, this Original Petition is allowed and Ext.P7 order stands set aside. I.A.No.4761/2014 is revived and the same is remitted to the court below. The court below shall consider Ext.P5 objection, hear the parties afresh and dispose of Ext.P7 on merits. It is made clear that this Court has not expressed any opinion regarding the merits or otherwise of Ext.P7 order. The court below shall

dispose of the said IA as expeditiously as possible, at any rate within three weeks from the date of receipt of a copy of this judgment.

It is made clear that, till then, the order of *status quo* as on today, will continue.

Sd/-
B.KEMAL PASHA, JUDGE

ul/-

// True Copy //

PA to Judge