

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

OP(C).No. 2485 of 2014 (O)

AGAINST THE JUDGMENT IN CMA 9/2011 of SUB COURT, CHERTHALA
DATED 25-03-2013

PETITIONERS/APPELLANTS/RESPONDENTS/DEFENDANTS:

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1. VALSAPPAN
S/O.GOPALAN
PRESENTLY RESIDING AT KEEKKARAYIL FROM PUTHENPURAYIL
PANAVALLY MURI OF PANAVALLY VILLAGE, PANAVALLY P.O.
CHERTHALA.
 2. GEETHA
W/O.VALSAPPAN
RESIDING AT KEEKKARAYIL FROM PUTHENPURAYIL
PANAVALLY MURI OF PANAVALLY VILLAGE, PANAVALLY P.O.
CHERTHALA.

BY ADVS.SRI.T.JAYAKRISHNAN
SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENT/RESPONDENT/PETITIONER/PLAINTIFF:

P.H.ABDUL KALAM
S/O.P.K.HASSANAR, KALAM MANZIL, AGSRA No.15
AALEEFMIYA, LFC ROAD, KALOOR FROM KURICHIMUTTOM POST
VALLANA MURI, KIDANGANNOOR VILLAGE, KOZHENCHERY TALUK
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.A.JAYASANKAR
BY ADV. SRI.C.V.MANUVILSAN
BY ADV. SRI.MANU GOVIND
BY ADV. SRI.RAJAN VISHNURAJ

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1. TRUE COPY OF THE PLAINT IN OS NO.489/2010 DATED 30/10/2010 IN THE FILES OF THE MUNSIFF'S COURT, CHERTHALA.
- EXT.P2. TRUE COPY OF THE SERVED INJUNCTION ORDER PASSED IN IA NO.3508/2010 IN OS NO.489/2010 DATED 30/10/2010.
- EXT.P3. TRUE COPY OF THE OBJECTION FILED TO IA NO.3508/2010 DATED 27/11/2010 IN OS NO.489/2010.
- EXT.P4. TRUE COPY OF WRITTEN STATEMENT FILED BY THE DEFENDANT'S DATED 18/2/2011 IN OS NO.489/2010.
- EXT.P5. TRUE COPY OF THE IA NO.525/2011 FILED BY THE DEFENDANT DATED 16/2/2011 IN OS NO.489/2010.
- EXT.P6. TRUE COPY OF THE OBJECTION FILED BY THE DEFENDANTS TO EXT.P5 PETITION DATED 21/2/2011.
- EXT.P7. TRUE COPY OF ORDER PASSED IN IA NO.525/2011 DATED 18/3/2011.
- EXT.P8. TRUE COPY OF THE APPEAL MEMORANDUM DATED 28/3/2011 OF CMA NO.9/2011.
- EXT.P9. TRUE COPY OF THE ORDER PASSED IN CMA NO/9/2011 DATED 25/3/2013.
- EXT.P10. TRUE COPY OF THE PLAINT IN OS NO.124/2012 IN THE FILES OF THE MUNSIFF COURT, CHERTHALA, DATED 5/3/2012.
- EXT.P11. TRUE COPY OF THE COMMISSION REPORT OBTAINED IN EXT.P1 SUIT DATED 8/11/2010.
- EXT.P12. TRUE COPY OF THE COMMISSION REPORT OBTAINED IN EXT.P10 SUIT DATED 8/3/2012.
- EXT.P13. A TYPE WRITTEN COPY OF PARTITION DEED NO.731/1955 DATED 731/1955 DATED 15/3/1955 OF AROOKUTTY S.R.O.
- EXT.P14. A TYPE WRITTEN COPY OF PARTITION DEED NO.1560/1978 DATED 18/5/1978 OF PANAVALLY S.R.O.
- EXT.P15. A TRUE COPY OF SALE DEED NO.1403/1994 DATED 23/4/1994 OF PANAVALLY S.R.O.

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- EXT.P16. A TYPED WRITTEN COPY OF SALE DEED NO.1994/1996 IN THE FILES OF THE S.R.O DATED 17/5/1996.
- EXT.P17. A TRUE COPY OF SALE DEED NO.2907/1997 IN THE FILES OF THE S.R.O. PANAVALLY DATED 12/8/1997.
- EXT.P18. TRUE COPY OF THE SALE DEED RELIED ON BY PLAINTIFF IN THE ABOVE CASE WHICH STANDS REGISTERED AS SALE DEED NO.504/2006 DATED 23/2/2006.
- EXT.P19. TRUE COPY OF THE COMMISSION APPLICATION FILED BY THE DEFENDANTS AS IA 1976/2012.

RESPONDENT'S EXHIBITS: NIL.

// True copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.2485 OF 2014

Dated this the 26th day of May, 2015.

J U D G M E N T

Aggrieved by the order dated 18.03.2011 in I.A.No.525/2011 in O.S.No.489/2010 by the Principal Munsiff Court, Cherthala as confirmed in C.M.A.No.9/2011, the defendants in O.S.No.489/2010 have come up before this Court with this original petition under Article 227 of the Constitution of India.

2. Petitioners are defendants in the suit. The suit was one for permanent prohibitory injunction and for other consequential reliefs. The plaintiff claimed to be the absolute owner of the plaint schedule property and he is putting up constructions in the property. Apprehending problems from the defendants while making constructions, plaintiff laid the suit seeking to have the defendants restrained from trespassing into the plaint schedule property and also from causing obstruction to the construction being carried on in the property.

3. Along with the suit, plaintiff moved I.A.No.3508/2010 for temporary injunction, and an interim ex parte order of injunction was granted. The plaintiff, in order to bring home the state of affairs, sought for issuance of a commission and the court appointed a Commissioner to visit the property. The Commissioner who initially visited the property surrendered the order and a second Commissioner was appointed. The second Commissioner visited the property and submitted a report in which it is pointed out that new fence had been put up on the north eastern corner portion of plaint schedule property which is adjacent to the road therein.

4. Faced with the above situation, plaintiff moved I.A.No.525/2011 for mandatory injunction to have the obstruction removed in order to have construction carried on. The respondents in the petition very vehemently opposed the petition. But, based on the Commissioner's report, trial court granted an interim mandatory injunction directing removal of objectionable fencing. Though the respondents before the trial court carried the matter in appeal, they did not succeed.

5. Learned counsel appearing for the petitioners before this Court contended that their document of title was executed at an earlier point of time and the title deed by which the plaintiffs in the present suit got their properties was executed subsequently. Very cleverly, according to the learned counsel appearing for the petitioners before this Court, a recital is included in the document of title of the plaintiff's property that an error has been crept in the description of property conveyed to the petitioners before this Court. Learned counsel pointed out that if there was any mistake in that document, there were other means to have the mistakes rectified and rectification by way of a subsequent deed in favour of a stranger is not the remedy. Learned counsel also pointed out that the present attempt is to create a new way through the property of the plaintiff as it could be seen from the document of title that the plaintiff had no direct access from the panchayath road. It is also pointed out that further attempt on the part of the plaintiff, under the guise of removal of obstruction alleged to have been caused by the petitioners, is to reclaim a pond in the property. These apprehensions of the petitioners may be

safeguarded.

6. One fact has to be noticed. The interim order of injunction passed by the trial court has not so far been challenged before any court. It stands. Whether the narration in the title deed of the plaintiff is binding on the defendants in the suit is a matter to be decided at the time of trial of the suit.

7. At the time of hearing of this petition, this Court was given to understand that the defendants or in other words, the petitioners before this Court also has filed a suit for certain reliefs as O.S.No.124/2012.

8. The interim order of injunction passed in O.S.No.489/2010 prevented the defendants from causing any obstruction to the alleged construction that was being carried on in the premises of the plaintiff.

9. The grievance of the petitioner before the court below was that in gross violation of the injunction order, a new fence has been put up preventing the petitioner from taking materials to his property for construction. Though a commission was initially taken out, she surrendered the warrant and thereafter a

second commissioner was appointed and the second commissioner visited the property and submitted a report. The second Commissioner's report is marked as Ext.P11. In Ext.P11, with the aid of a rough sketch, Commissioner pointed out that a fence is seen put up on a particular portion of the property which appeared to be three days old. This observation by the Commissioner persuaded the trial court to come to the conclusion that in all probabilities the said fence must have been put up after the interim order was passed which is served on the same day on which the order was passed. It is under this circumstance that the mandatory injunction order was passed.

10. It is true that it is very unusual for a court to pass interim mandatory injunction. But there is no total prohibition. If the court is satisfied that in order to restore the status quo which the court ordered at a particular point of time an interim mandatory injunction is necessary, certainly and surely the court is empowered to pass such orders as are sufficient to keep the previous order.

11. Learned counsel appearing for the respondent before

this Court contended that the apprehension now expressed by the learned counsel for the petitioners in complaining of attempt by respondent to fill up pond is without any basis and it is only to justify the objectionable act. At any rate, learned counsel appearing for the respondent pointed out that the respondent had no intention to fill up any pond in the property.

12. Going by the materials now available before this Court, it is too early for this Court to say that the recital in the document of title of the plaintiff in the present suit is binding on the defendants in the suit or to conclude which title deed prevails. These are all matters to be gone into at the time of trial of the suit.

13. It is significant to notice that the commission taken out in the suit filed by the defendants in the present suit found it difficult to identify the property. But that does not mean that the interim order passed by the court below in the suit need not be given effect to. That has certainly to be obeyed. It is only for that purpose that the plaintiff in the present suit moved a petition for interim mandatory injunction.

14. Learned counsel appearing for the petitioners before this Court pointed out that the petitioners are prepared to remove the objectionable fencing and there may be an observation to the effect that that may not be taken aid of by the plaintiff in the suit to reclaim or tamper with the pond as it now stands.

Well, as of now, there is no dispute as regards the pond in the suit. But, if that is the apprehension, there is nothing at present to show that the plaintiff in the present suit has any intention to tamper with the pond. Anyhow, it is made clear that the petitioners before this Court shall remove the objectionable fencing within a period of one week from today and also that the plaintiff in the present suit shall not tamper with the pond.

With the above observation, this original petition is disposed of.

Sd/-

**P.BHAVADASAN
JUDGE**

smp