

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

OP(C).No. 2562 of 2014 (O)

IA.729/2014 IN OS.NO.192/2014 OF MUNSIFF COURT, KALPETTA, DATED 23/10/2014

PETITIONER(S)/PLAINTIFF IN ABOVE SUIT:

C.K.PRABHAKARAN NAIR,
S/O.(LATE) BHASKARAN NAIR, FLAT NO.4D, GURU PRASAD FLAT
NEW NO.1, KARNAN STREET, KODAMBAKKAM
CHENNAI - 600024.

BY ADV. SRI.A.KRISHNAN

RESPONDENT(S)/DEFENDANTS IN ABOVE SUIT:

1. SASIDHARAN C.K.
S/O.(LATE) BHASKARAN NAIR, VRINDAVAN HOUSE
VINAYAKA COLONY, KALPETTA, WAYANAD - 673121.
2. SUNDEEP C.K
S/O.(LATE) BHASKARAN NAIR, NO.5/65D, KAILASAM HOUSE
INDIRA NAGAR HOUSING COLONY, POOMALA POST
SULTHAN BATHERY, WAYANAD DISTRICT - 673 592.
3. C.K.VINOD KUMAR
S/O.(LATE) BHASKARAN NAIR, VRINDAVAN HOUSE
VATTATHUVAYAL VADUVANCHAL POST, VYTHIRI TALUK
WAYANAD DISTRICT - 673 576.
4. C.K.MEENAKSHI AMMA
W/O.(LATE) BHASKARAN NAIR, VRINDAVAN HOUSE
VATTATHUVAYAL VADUVANCHAL POST, VYTHIRI TALUK
WAYANAD DISTRICT - 673 576.

BY ADV. SMT.CELINE JOSEPH

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 30-03-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

OP(C).No. 2562 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF PLAINT IN O.S.NO.192 OF 2014 HON'BLE MUNSIFF COURT, KALPETTA.**
- EXT.P-2: TRUE COPY OF THE COMMISSION APPLICATION I.A.NO.729 OF 2014 IN O.S.NO.192 OF 2014.**
- EXT.P-3: TRUE COPY OF THE WRITTEN STATEMENT**
- EXT.P-4: TRUE COPY OF THE INTERIM REPORT OF COMMISSION**
- EXT.P-4(A): TRUE EXTRACT OF THE MEMO OF COMMISSIONER**
- EXT.P-5: TRUE COPY OF THE I.A.NO.838 OF 2014 IN O.S.NO.192 OF 2014**
- EXT.P-5(A): TRUE COPY OF THE OBJECTION TO EXT.P5**
- EXT.P-6: TRUE COPY OF THE I.A.NO.878 OF 2014 IN O.S.NO.192 OF 2014**
- EXT.P-7: TRUE COPY OF THE OBJECTION TO EXT.P6**
- EXT.P-8: TRUE COPY OF ORDER IN I.A.NO.729 OF 2014 IN O.S.NO.192 OF 2014**
- EXT.P-9: TRUE COPY OF THE ORDER IN I.A.NO.878 OF 2014 IN O.S.NO.192 OF 2014 DT.23.10.14**
- EXT.P-10: TRUE COPY OF ORDER IN I.A.NO.729 OF 2014 IN O.S.NO.192 OF 2014 DT.23.10.14**
- EXT.P-11: TRUE COPY OF THE INTERIM INJUNCTION ORDER.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.BHAVADASAN, J.

O.P.(C) No. 2562 of 2014

Dated this the 30th day of March, 2015

J U D G M E N T

Under challenge is Ext.P10 order whereby, the court below passed the following order:

“Advocate Commissioner has filed interim report. The Commissioner is directed to file final report if any without further inspection and to return the warrant if no further report need be filed. For report or to return warrant. Further inspection will be ordered as at when required. For report or to return warrant - 20-11-2014”.

2. In a suit for partition, there were ten items of properties for which partition was sought for. Item No. 10 related to a partnership asset. The plaintiff in the suit sought for issuance of Commission to report in detail in order to ascertain the present lie, nature and condition of the plaint schedule property. In the petition, some of the items sought to be ascertained by the Commissioner reads as follows:

“(9) To report regarding the present state of fertilizer business, condition of the room, room number, stock, accounts for the last three years of the firm, present condition of the bank account of the firm in SBI, Vaduvanchal Branch, statement of the accounts of the firm in the SBI, Vaduvanchal Branch for the last three years, regarding the item No. 10 in the petition/plaint schedule property.

(10) To prepare an inventory of the room where in fertilizer business is going on as per item No. 10 in the petition/plaint schedule property.”

3. The respondents before this Court sought to recall the Commission and they filed Ext.P5(a) i.e., I.A.No. 878/2014. When the commissioner visited item No.10, he was obstructed from taking inventory and therefore he filed the report before the court below. That persuaded the plaintiff to memo to provide Police aid to the Commissioner for taking inventory of Item No. 10 to the plaint schedule.

4. The court below passed the impugned order which has already been referred to.

5. The learned counsel appearing for the petitioner pointed out that there were no justification in passing the above order and there are now two contradictory orders existing in relation to the Commissioner's visit. While the court below, by Ext.P9 order, declined to recall the Commissioner, by Ext.P10 order, the court below declined to grant Police protection to the Commissioner for taking inventory of the property.

6. The learned counsel appearing for the respondents invited attention of this Court to Ext.P2 work memo given by the Commissioner and pointed out that items 9, 11 and 12 are objectionable. Those are matters to be tried by the court below. As far as item No. 12 is concerned, it is contented that it is not a subject matter of partition nor is included in the plaint schedule property.

7. After having heard the counsel on both sides, it is felt that there is no justification for the court below to have declined Police aid for taking inventory of Item No. 10 i.e.

the room where the fertilizer business is going on. The inventory by the Commissioner is neither a piece of evidence for existence or non existence of the firm, which has to be proved by other items of evidence. However, if it is found to be later on partible, there may not be any controversy regarding the manner in which it is to be partitioned. For that purpose, the inventory is appropriate.

For the above reason, this petition is allowed. Ext.P10 order is set aside and the court below is directed to give Police aid to the Commissioner to prepare inventory of item No. 10.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge