

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

OP(C).No. 2704 of 2014 (O)

(AS 40/2014 of SUB COURT,KATTAPPANA)

PETITIONER/RESPONDENT No.1 IN I.A. & A.S/ PLAINTIFF IN O.S.:

SHERLEY @ PHILOMINA, AGED 49 YEARS
D/O.ALBERT, PRIYAS EVERTEEN BEAUTY CLINIC
CIVIL LINGS ROAD, PALARIVATTOM, ERNAKULAM DISTRICT,
KOCHI - 682 025.

BY ADVS.SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANIAN
SRI.SABU GEORGE

RESPONDENTS/PETITIONERS & RESPONDENT No.23 IN I.A./APPELLANTS &
RESPONDENT No.23 IN A.S./DEFENDANTS IN O.S.:

1. K.J.STEPHEN, AGED 82 YEARS
S/O.K.T.JOSEPH, RESIDING AT KOIKKARANPARAMBIL HOUSE,
RANIMUDI ESTATE, VAGAMON KARA, VAGAMON VILLAGE
PEERMEDU TALUK, IDUKKI DISTRICT, PIN - 685 531.
2. JOLLY STEPHEN, AGED 54 YEARS,
S/O.K.J.STEPHEN, RESIDING AT KOIKKARANPARAMBIL HOUSE,
RANIMUDI ESTATE, VAGAMON KARA, VAGAMON VILLAGE,
PEERMEDU TALUK, IDUKKI DISTRICT, PIN - 685 531.
3. KURUVILA FRANCIS, AGED 62 YEARS,
S/O.KURUVILA, PULICKAL HOUSE, PONNICHIRA ROAD
CENTRE PART HOUSE NO.49/2116/K, ELAMAKKARA KARA
EDAPPALLY VILLAGE, KANAYANNOOR TALUK
ERNAKULAM DISTRICT - 682 024.
4. ELIZABETH, AGED 59 YEARS,
W/O.FRANCIS KURUVILA, PULICKAL HOUSE, PONNICHIRA ROAD,
CENTRE PART HOUSE, NO.49/2116/K, ELAMAKKARA KARA,
EDAPPALLY VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DISTRICT - 682 024.

R1 & R2 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 20-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P-1: DATED 6.11.2010 - A TRUE COPY OF THE PLAINT IN
O.S.NO.161/2010 ON THE FILE OF THE MUNSIFF COURT,
PEERMADE.
- EXT.P-2: DATED 25.3.2011 - A TRUE COPY OF THE WRITTEN STATEMENT
FILED BY THE FIRST DEFENDANTS IN THE SUIT, O.S.NO.161
OF 2010, MUNSIFF'S COURT, PEERMADE.
- EXT.P-3: DATED 9.11.2010 - A TRUE COPY OF THE INJUNCTION ORDER IN
I.A.796/2010 IN O.S.NO.161/2010 PASSED BY THE LEARNED
MUNSIFF OF PEERMADE.
- EXT.P-4: DATED 30.9.2014 - A TRUE COPY OF THE JUDGEMENT IN
O.S.NO.161/2010 PASSED BY THE LEARNED MUNSIFF OF
PEERMADE.
- EXT.P-5: DATED 7.10.2014 - A TRUE COPY OF THE APPEAL MEMORANDUM
IN A.S.NO.40 OF 2014 ON THE FILE OF THE SUB JUDGE,
KATTAPPANA.
- EXT.P-6: DATED 7.10.2014 - A TRUE COPY OF THE I.A.NO.892 OF 2014 IN
A.S.NO.40 OF 2014 ON THE FILE OF THE SUB JUDGE,
KATTAPPANA.
- EXT.P-7: DATED 9.10.2014 - A TRUE COPY OF THE COUNTER AFFIDAVIT
FILED BY THE PETITIONER HEREIN IN I.A.NO.892 OF 2014 IN
A.S.NO.40 OF 2014 BEFORE THE SUB JUDGE, KATTAPPANA.
- EXT.P-8: DATED 5.11.2014 - A TRUE COPY OF THE ORDER IN I.A.NO.892
OF 2014 IN A.S.NO.40 OF 2014 PASSED BY THE LEARNED SUB
JUDGE, KATTAPPANA.

RESPONDENT(S)' EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.2704 OF 2014

Dated this the 20th day of January, 2015.

J U D G M E N T

Controversy in this case is rather limited to the extent of nature of order passed by the court below at the interlocutory stage.

2. The petitioner instituted O.S.No.161/2010 before the Munsiff Court, Peermade for permanent prohibitory injunction. Defendants 1 and 2 though disputed the title and ownership of the petitioner, according to the petitioner, did not set up any title and possession for others. After trial, suit was decreed. Defendants 1 and 2 carried the matter in appeal as A.S.No.40/2014 before the Sub Court, Kattappana. They also moved I.A.No.892/2014 for interim relief. The lower appellate court, after hearing both sides, passed the impugned order (Ext.P8) which reads as follows:

“.....In these circumstances, the parties in this case shall maintain status-quo as found by the

lower court till the disposal of the appeal. Meantime the petitioners also entitled to get an order of stay of the execution of the decree till the disposal of the appeal”.

The said portion of the order is assailed in this original petition.

3. Sri.P.B.Krishnan, learned counsel appearing for the petitioner, contended that the interim order on the very face of it is unsustainable in law and under the guise of the interim order, now respondents are trying to trespass into the property and interfering with the possession of the plaintiff. The court below was therefore not justified in passing the impugned order.

4. Sri.Sreekumar G. (Chelur), learned counsel appearing for the respondents, on the other hand, contended that the counsel appearing in lower court was able to convince the court below that there are materials to be gone into in the case and the finding of the trial court may not be fully justified. He has got a case that even the plaintiff has no case that she has any property in survey No.724 and the decree takes in a portion of the property in the said survey number. This probably is a factor which persuaded the court below to pass the impugned order.

5. After having heard the learned counsel on both sides, while the interest of both parties have to be safeguarded, it is only proper to direct that both parties shall maintain state of affairs as shown by the Commissioner in his plan on the basis of which decree was passed. Ordered accordingly.

6. Both parties submit that there may be a direction to the court below to dispose of the appeal as expeditiously as possible.

There will be a direction to the lower appellate court to take up the appeal namely, A.S.No.40/2014 and dispose of it as expeditiously as possible, at any rate, before the closure of the court for summer vacation. It is made clear that under the cover of this order, defendants 1 and 2 shall not trespass into any portion of the decree schedule property.

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

Sd/-

P.BHAVADASAN
JUDGE

smp