

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

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

RSA.No. 1217 of 2014 ()

AGAINST THE JUDGMENT IN AS 160/2013 of ADDITIONAL DISTRICT JUDGE-IV,
ERNAKULAM DATED 17-10-2014

AGAINST THE JUDGMENT IN COUNTER CLAIM IN O.S.NO. 1180/2009 of II ADDITIONAL
MUNSIFF, ERNAKULAM DATED 30-11-2013

APPELLANT(S)/APPELLANTS/PLAINTIFFS IN THE COURTS BELOW:

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1. C.K.GOPALAN , AGED 47,
S/O. KUNJAN, CHALIYATH KAROTT HOUSE, MARITHAZHAM P.O.
KANJIRAMATTOM, ERNAKULAM.
 2. C.K.RAJU, AGED 41,
S/O. KUNJAN, CHALIYATH KAROTT HOUSE, MARITHAZHAM P.O.
KANJIRAMATTOM, ERNAKULAM.
 3. C.K.KRISHNANKUTTY, AGED 50
S/O. KUNJAN, CHALIYATH KAROTT HOUSE, MARITHAZHAM P.O.
KANJIRAMATTOM, ERNAKULAM.
 4. SAVITHRI, AGED 51,
W/O. RAMANAN & D/O. KUNJAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM.

BY ADVS.SRI.N.RATHEESH
SMT.SUMA RATHEESH

RESPONDENT(S)/RESPONDENTS/DEFENDANTS IN THE COURTS BELOW:

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1. KALIKUTTY, AGED ABOUT 71,
W/O. LATE KANNAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM-682315.
 2. ARAVINDAN, AGED ABOUT 46,
S/O. LATE KANNAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM-682315.
 3. DIVAKARAN, AGED ABOUT 43,
S/O. LATE KANNAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM-682315.
 4. MINI, AGED ABOUT 39,
D/O. LATE KANNAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM-682315.

5. BINDU, AGED ABOUT 35,
D/O. LATE KANNAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM-682315.
6. MOHANAN, AGED ABOUT 33,
S/O. LATE KANNAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM-682315.
7. SREEJA, AGED ABOUT 31,
D/O. LATE KANNAN, CHALIYATH KAROTT HOUSE
MARITHAZHAM P.O., KANJIRAMATTOM, ERNAKULAM-682315.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.1217 of 2014

Dated this the 20th day of January, 2015

JUDGMENT

Appellants are the plaintiffs in a suit for permanent prohibitory injunction. The respondents/defendants entered appearance in the suit and filed a counter claim seeking injunction against the appellants/plaintiffs from trespassing into the plaint schedule property.

2. It is seen from the judgments of the courts below that the suit was withdrawn by the appellants stating that there was a formal defect in the plaint and it was allowed to be withdrawn under Order 23 Rule 1 of the Code of Civil Procedure (in short, "CPC"). Subsequently, the counter claim was proceeded with. Learned trial Judge after considering the rival contentions decreed the counter claim, thereby restraining the appellants from trespassing into the plaint schedule property and also from causing obstruction to the peaceful possession and enjoyment of the property by the respondents. The appellants took up the matter in first appeal before the lower appellate court. The lower appellate court after considering the evidence in extenso dismissed the appeal confirming the decree passed by the trial court. Feeling aggrieved by the concurrent findings of the courts below, this second appeal is filed.

3. Heard the learned counsel for the appellants and perused the records.

4. At the outset, I may observe that there is no substantial question of law arising in this appeal. Learned counsel for the appellants submitted that the courts below should have considered the averments in the plaint, which was withdrawn, as answer to the counter claim. I am afraid, I cannot agree with this contention for the reason that Order 8 Rule 6A, Sub-rule (3) CPC specifically states that the plaintiff is at liberty to file a written statement in answer to the counter claim of the defendant within such period as may be fixed by the court. It gives out a clear indication that the plaintiff in the suit where any counter claim is filed is relegated to the position of a defendant and he is expected to file a separate written statement in answer to the counter claim within such period as may be specified by the court. If the averments in the plaint were to be taken as reply to the contentions in the counter claim, there was no necessity for incorporating such a provision in the Code.

5. Learned counsel for the appellants submitted that after withdrawing the suit, the appellants have filed another suit as O.S.No.258 of 2014 before the trial court. That is a suit for declaration that the appellants have a right of easement of necessity over the property involved in the suit. It is the apprehension of the appellants that if the decree in O.S.No.1180 of 2009 is allowed to become final, they will be prejudicially

affected in prosecuting O.S.No.258 of 2014. It goes without saying that O.S.No.1180 of 2009 was one for permanent prohibitory injunction wherein the only question to be decided is regarding the possession of the property on the date of suit. O.S.No.258 of 2014 filed by the appellants, which is pending before the trial court, is one for a declaration and consequential injunction in respect of an easement right claimed by them. I am of the view that nature of the suit will have a bearing on the question to be resolved in the subsequent suit. The appellants, having taken recourse to law, can proceed with the subsequent suit in accordance with law. However, I do not wish to express opinion affecting the merits of the pending suit. This appeal is not maintainable for want of substantial question of law.

In the result, the appeal is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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