

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

WP(C).No. 1488 of 2015 (I)

PETITIONER(S) :-

A.K.JOSEPH @ SAJEEV, AGED 48 YEARS
S/O.KURUVILA, ASSAMPARAMBIL, CHANGAMGARY P.O.
EDATHUVA, KUTTANAD TALUK
ALAPPUZHA DISTRICT REPRESENTED BY HIS POWER
OF ATTORNEY HOLDER K.J.ANTONY
KONNOTH HOUSE, CHAMPAKULAM P.O., ALAPPUZHA DISTRICT.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
SMT.T.J.SEEMA

RESPONDENT(S) :-

1. THE CIRCLE INSPECTOR OF POLICE,
PUTHENCROUZ CIRCLE OFFICE, PUTHENCROUZ
ERNAKULAM-682308.
2. THE DEPUTY SUPERINTENDENT OF POLICE
MUVATTUPUZHA-686134.
3. BENNY MATHEW
S/O.LATE MATHAI, PENATH HOUSE, KINGINIMATTAM
AAYIKKARANAD SOUTH VILLAGE, KOLENCHERI
ERNAKULAM DISTRICT-682311.

R3 BY ADV. SRI.PAUL K.VARGHESE
SMT.A.A.GEETHA
R1 & R2 BY GOVERNMENT PLEADER SRI.P.P.PADMALAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

WP(C).No. 1488 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS :-

EXT. P1 : TRUE COPY OF THE RECEIPT DT.24-10-2014 EVIDENCING
LATEST REMITTANCE OF PROPERTY TAX.

EXT. P2 : TRUE COPY OF THE DECREE IN OS 14/12 OF THE MUNSIF
COURT, KOLENCHERRY, DT.8-2-13.

EXT. P3 : TRUE COPY OF THE JUDGMENT IN AS 35/13 OF THE SUB COURT,
PERUMBAVOOR DT.21-6-14.

EXT. P4 : TRUE COPY OF THE JUDGMENT IN RSA 998/14 OF THIS HON'BLE
COURT, DT.25-9-14.

EXT. P5 : TRUE COPY OF THE LEASE AGREEMENT DT.15-12-14 WITH ITS
TRANSLATION.

EXT. P6 : TRUE COPY OF THE PETITION DT.8-1-15 SUBMITTED BY THE
PETITIONER BEFORE THE DISTRICT SUPERINTENDENT OF POLICE WITH ITS
TRANSLATION.

EXT. P7 : TRUE COPY OF THE RECEIPT ISSUED BY THE R2.

EXT. P8 : TRUE COPY OF THE COMPLAINT DT.7-1-15 SUBMITTED BY THE
PETITIONER BEFORE R1 WITH ITS TRANSLATION.

EXT. P9 : TRUE COPY OF THE RECEIPT DT.7-1-15 ISSUED BY THE OFFICE
OF R1 WITH ITS TRANSLATION.

EXT. P10 : TRUE COPY OF THE POWER OF ATTORNEY EXECUTED BY THE
PETITIONER DT.10-11-14.

RESPONDENT(S)' EXHIBITS :-

EXT.R3(a) : TRUE COPY OF THE PLAINT IN O.S.2/2015 ON THE FILE OF
MUNSIF COURT, KOLENCHERRY DATED 16/1/2015.

EXT.R3(b) : TRUE COPY OF THE INJUNCTION PETITION AS IA No.24/15
IN O.S.No.2/15 FILED BY THE 3RD RESPONDENT BEFORE THE MUNSIF
COURT, KOLENCHERRY DATED 16/1/2015.

EXT.R3(c) : TRUE COPY OF THE COMMISSION REPORT IN OS No.2/15 OF
THE MUNSIF COURT, KOLENCHERRY DATED 22/1/15.

EXT.R3(ca) : THE ENGLISH TRANSLATION OF EXT.R3(c).

EXT.R3(d) : TRUE COPY OF THE IA No.47/15 IN OS No.2/15 FILED BY
THE PETITIONER BEFORE MUNSIF COURT, KOLENCHERRY DATED 23/1/15.

//TRUE COPY//

P.S. TO JUDGE

A.M.SHAFFIQUE & P.V.ASHA, JJ

W.P(C).No.1488 of 2015

Dated this the 28th April, 2015

JUDGMENT

Shaffique, J.

The petitioner has approached this Court seeking police protection. It is inter alia contended that the property having an extent of 20 cents originally belonged to the third respondent, who had executed a gift deed in favour of the petitioner. Later, the third respondent cancelled the said deed. Challenging cancellation of the deed, the petitioner had preferred a suit as O.S.No.14/2012 before the Munsiff's Court, Kolencherry. The suit was decreed cancelling the document executed by the third respondent. Though the matter was carried in appeal and second appeal, the third respondent was not successful. Review Petition filed was also dismissed. Learned counsel for the petitioner submits that the third respondent is now obstructing the possession of the property by the petitioner, who had already constructed a building in the said property.

2. A counter affidavit has been filed by the third respondent inter alia stating that the third respondent is not in possession of the property and O.S.No.2/2015 has been filed by him before the Muinsiff's Court, Kolencherry seeking fixation of boundary of plaint 'A' schedule property based on Document No.3575/1995 and gift deed No.2900/2001. The third respondent has also sought for a decree to restrain the petitioner from causing any obstruction to the enjoyment of the plaintiff and tenant over the plaint schedule property. Learned counsel for the petitioner submits that there is no interim injunction restraining the petitioner from exercising the act of possession in respect of the property. Learned counsel for the third respondent, however, would argue that possession of the property still vests with the third respondent.

3. Apparently, the civil dispute between the petitioner and the third respondent had attained finality. The third respondent himself was the donor of the

property and when the gift deed had been accepted, it is clear that the gift had come into effect when the possession is handed over to the donee. When the gift deed was approved by the Court and the cancellation deed has been set aside by the Civil Court, the third respondent cannot claim any act of possession in respect of the said item of property. In the said circumstances, we are of the view that possession, if any, claimed by the third respondent is clearly mala fide.

4. Learned counsel for the petitioner submits that the obstruction is created by the third respondent alone and there is no tenant in the said building as alleged.

5. Having regard to the aforesaid submission, we are of the view that the petitioner is entitled to get police protection in the matter. The third respondent has no right whatsoever to interfere with the possession of the property by the petitioner.

Hence, there will be a direction to the first respondent to ensure that sufficient police protection is granted to the petitioner to exercise the act of possession in respect of the property covered by Exhibit P2 decree.

The Writ Petition is disposed of as above.

**Sd/-
A.M.SHAFFIQUE
JUDGE**

**Sd/-
P.V.ASHA, JUDGE**

vgs28/4/15