

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 20857 of 2014 (F)

PETITIONER(S) :

1. PUSHPA BALAN
W/O.LATE A.K.BAHULEYAN @ BALAN, NARAYANA COMPOUND
N.G.ROAD, 6TH CROSS, ATTAVAR
MANGALORE.

2. KARUNAKARAN,
S/O.LATE A.K.BAHULEYAN @ BALAN, NARAYANA COMPOUND
N.G.ROAD, 6TH CROSS, ATTAVAR
MANGALORE.

3. KALAVATHY,
D/O.LATE A.K.BAHULEYAN @ BALAN, NARAYANA COMPOUND
N.G.ROAD, 6TH CROSS, ATTAVAR
MANGALORE.

BY ADVS.SRI.S.SHANAVAS KHAN
SMT.S.INDU

RESPONDENT(S) :

1. THE SUPERINTENDENT OF POLICE, ALAPPUZHA
ALAPPUZHA.

2. THE DEPUTY SUPERINTENDENT OF POLICE,
CHERTHALA, ALAPPUZHA DISTRICT.

3. THE SUB INSPECTOR OF POLICE,
ARTHUNGAL POLICE STATION, CHERTHALA
ALAPPUZHA DISTRICT.

4. SHANMUGHAN,
S/O.KELAPPAN, PUTHENVELIYIL, THEKKUM MURI
MAYITHARA, CHERTHALA, ALAPPUZHA DISTRICT.

5. CHANDRAHAS,
S/O.SHANMUGHAN, PUTHANVELIYIL, THEKKUM MURI
MAYITHARA, CHERTHALA, ALAPPUZHA DISTRICT.

6. ANIL,
S/O.SHANMUGHAN, PUTHANVELIYIL, THEKKUM MURI
MAYITHARA, CHERTHALA, ALAPPUZHA DISTRICT.

7. SUDARSAN,
S/O.SHANMUGHAN, PUTHANVELIYIL, THEKKUM MURI
MAYITHARA, CHERTHALA, ALAPPUZHA DISTRICT.

R1 TO R3 STATE ATTORNEY SRI.P. VIJAYARAGHAVAN
R4-R7 BY ADVS.M/S. K.G.PAVITHRAN & V.N.SUBHANGAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 02-02-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1: COPY OF THE JUDGMENT DATED 18/11/94 IN O.S.NO.455/1990 OF THE HON'BLE MUNSIF COURT, CHERTHALA.

P2: COPY OF THE JUDGMENT DATED 18/7/2001 IN A.S.NO.37 OF 1995 OF THE SUBORDINATE JUDGES COURT, CHERTHALA.

P3: COPY OF THE DECREE DATED 18/7/2001 IN A.S.NO.37 OF 1995 OF THE SUBORDINATE JUDGES COURT, CHERTHALA.

P4: COPY OF THE ORDER DATED 12/3/13 IN I.A.NO.1968 OF 2004 IN O.S.NO.455 OF 1990 OF THE PRINCIPAL MUNSIF, CHERTHALA.

P5: COPY OF THE ORDER DATED 12/3/13 IN I.A.NO.2278/06 IN O.S.NO.455 OF 1990 OF THE PRINCIPAL MUNSIF, CHERTHALA.

P6: COPY OF THE JUDGMENT DATED 28/10/2013 IN O.P(C)NO.3739/2013 OF THIS HON'BLE COURT.

P7: COPY OF THE JUDGMENT DATED 31/1/2014 IN A.S.NO.15/13 OF THE SUBORDINATE JUDGES COURT, CHERTHALA.

P8: COPY OF THE COMPLAINT PREFERRED BY THE PETITIONERS BEFORE THE SECOND RESPONDENT.

P9: COPY OF THE COMPLAINT FILED BY THE FIRST PETITIONER BEFORE THE DISTRICT COLLECTOR, ALAPPUZHA.

P10: COPY OF THE COMPLAINT PREFERRED BY THE FIRST PETITIONER BEFORE THE FIRST RESPONDENT.

/TRUE COPY/

P.S. to Judge

ASHOK BHUSHAN , Ag. CJ,
&
A.M.SHAFFIQUE, J.

.....
W.P. (C) No. 20857 of 2014 – F
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Dated this the 2nd day of February, 2015

JUDGMENT

Shaffique, J.

Petitioners have approached this Court seeking police protection. It is inter alia contended that Sri.A.K. Bahuleyan, husband of the first petitioner and father of petitioners 2 to 4, had obtained a decree in a partition suit O.S. 455/1990 which had become final. It is submitted that final decree proceedings have been completed and the property having an extent of 17.886 cents of land has been allotted in favour of the petitioners and they have taken possession of the said property by virtue of the orders passed by the Munsiff's Court in E.P. No. 108/2013 While

so, according to the petitioners, respondents 5 to 7 are obstructing enjoyment of the property and they are not permitting the petitioners to enter into the property.

2. A counter affidavit has been filed by respondents 5 to 7. According to them, they have not created any obstruction or any illegality as alleged. However, as far as the 7th respondent is concerned, he has filed a suit O.S. No. 370/2014 before the Munsiff's Court, Cherthala seeking declaration of title in respect of 0.80 Ares and a small shop room therein. Though initially an order of statusquo has been issued, it is now submitted by the learned counsel for the petitioners that the interim injunction application has been dismissed as per order dated 7-11-2014 in I.A. No. 2147 of 2014.

3. It is submitted by the learned counsel for the petitioners that private respondents are unnecessarily creating obstructions in their peaceful enjoyment of the property. Despite the fact that civil court has decreed their right and the property has also

been taken delivery, they are unable to exercise their right over the property.

4. The learned Government Pleader, on instructions, submitted that the petitioners intention is to demolish the small building in the property. It is not in dispute that the 7th respondent is the son of Shanmughan who was the first defendant in O.S. 455 of 1990. Apparently, the 7th respondent's right is subject of the right of Shammughan and in so far as the decree had already been executed against Shanmughan, rights of the parties will depend upon the nature of decree passed and the benefits derived from the same. Whether the 7th respondent has any independent right over the property, is a matter to be decided by the Munisff's Court. However, as matters stand now, respondents 5 to 7 have no right to obstruct the enjoyment of the property by the petitioners.

5. Hence, there will be a direction to the 3rd respondent to ensure maintenance of law and order in the matter relating to

the enjoyment of the properties by the petitioners which will be subject to the decision of the civil court in O.S. No. 370 of 2014.

This Writ Petition is disposed of accordingly.

Sd/- ASHOK BHUSHAN ,
Ag. CHIEF JUSTICE

Sd/-A.M.SHAFIFIQUE,
JUDGE

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