

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

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

WP(C).No. 31752 of 2014 (T)

PETITIONER:

GIRIJA MENON, AGED 49 YEARS,
W/O. B.HARIHARA VARMA (LATE),
RESIDING AT PANJAJANYAM,
MANAPPALLY KAVU PANDARAKKAVU YAKKARA AMSOM,
PALAKKAD - 678 013.

BY ADVS.SRI.V.S.CHANDRASEKHARAN
SRI.M.V.DAS
SMT.LEKSHMI SWAMINATHAN

RESPONDENTS:

1. THE SUPERINTENDENT OF POLICE
PALAKKAD - 678 014.
2. THE DEPUTY SUPERINTENDENT OF POLICE,
PALAKKAD - 678 014.
3. THE CIRCLE INSPECTOR OF POLICE,
SOUTH POLICE STATION,
KUNNATHUR MEDU, PALAKKAD - 678 013.
4. THE SUB INSPECTOR OF POLICE,
SOUTH POLICE STATION, PALAKKAD - 678 013.
5. VIMALA DEVI, AGED 55 YEARS
PANTHAPLAKKAL HOUSE, KADAKKAVUR, TRIVANDRUM - 695306.

R5 BY ADV. SRI.MOHAMMED RAFIQ
R1-4 BY GOVERNMENT PLEADER, SRI.MUHAMMED SHAFI

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

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1 - TRUE COPY OF THE MARRIAGE CERTIFICATE ISSUED BY THE EXECUTIVE OFFICER, SRI.EMOOR BHAGAVATHY TEMPLE, KALLEKULANGARA PALAKKAD DT. 01.10.10.
- EXT.P2 - TRUE COPY OF THE ADVERTISEMENT DT. 11.10.09 IN MATHRUBHOOMI DAILY NEWSPAPER.
- EXT.P3 - TRUE COPY OF THE POSTMORTEM CERTIFICATE OF THE PETITIONER'S HUSBAND SRI.HARIHARA VERMA.
- EXT.P4 - TRUE COPY OF THE JUDGMENT IN OP NO. 351/12 DT. 18.1.13 PASSED BY THE HON'BLE FAMILY COURT PALAKKAD.
- EXT.P5 - TRUE COPY OF THE COMMON JUDGMENT DT. 18.1.13 PASSED BY THE HON'BLE FAMILY COURT PALAKKAD.
- EXT.P6 - TRUE COPY OF THE ORDER DT. 28.4.12 IN CMP NO. 5950/11 IN MC NO. 94/11 PASSED BY THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT II PALAKKAD.
- EXT.P7 - TRUE COPY OF THE LEASE AGREEMENT DT. 17.4.13 EXECUTED BY THE PETITIONER IN FAVOUR OF MANARJI RADHAKRISHNAN.
- EXT.P8 - TRUE COPY OF THE JUDGMENT IN OS. 309/13 DT. 28.6.14.
- EXT.P9 - TRUE COPY OF THE APPEAL MEMORANDUM IN CMA NO. 163/14 FILED BY THE PETITIONER HEREIN BEFORE THE HON'BLE DISTRICT COURT PALAKKAD.
- EXT.P10 - TRUE COPY OF THE LEASE AGREEMENT EXECUTED BY THE PETITIONER WITH THE SAID MR.SUNIL KUMAR DT. 19.9.14 PALAKKAD.
- EXT.P11 - TRUE COPY OF THE LEASE AGREEMENT EXECUTED BY THE PETITIONER WITH THE SAID MR.DURGAM RAJESH KUMAR DT. 27.10.14.

RESPONDENTS' EXHIBITS

- EXT.R5(a) : TRUE COPY OF THE MARRIAGE CERTIFICATE DT.11.2.2013 ISSUED BY THE LOCAL REGISTRAR OF HINDU MARRIAGES & SECURITY VAKKOM GRAM PANCHAYAT TO THE 5TH RESPONDENT.
- EXT.R5(b): TRUE COPY OF THE DEATH CERTIFICATE NO.D0020275/1302222 DT.23.2.2013 OF SRI.B.HARIVARA VARMA ISSUED BY THE REGISTRAR OF BIRTHS & DEATHS, CORPORATION OF TRIVANDRUM.
- EXT.R5(c): TRUE COPY OF THE LEGAL CERTIFICATE NO.B4.22236/2013/K DATED 5.1.2015 ISSUED BY THE TAHSILDAR, CHIRAYINKEEZHU, TRIVANDRUM.
- EXT.R5(d): TRUE COPY OF THE MUTATION FEE RECEIPT NO.7174440 DT.4.6.2014 ISSUED BY THE VILLAGE OFFICER, YAKKARA VILLAGE.

// TRUE COPY //

PA TO JUDGE

A.M.SHAFFIQUE, J

W.P.C.No.31752 of 2014

Dated this the 30th day of March 2015

J U D G M E N T

This writ petition is filed seeking the following reliefs:

“1. Issue a writ of mandamus or other appropriate writ, order or direction directing the respondents 1-4 to stop the entire illegal initiation to evict the petitioner and her tenants from the residential house in 17.19 cents of Land bearing Door No.17/416 by name Panjajanyam in Sy.Nos.1596/1,2,1598/1 and 1599/1, Re.Sy.No.17, Block No.171 of Yakkara Village covered by Sale Deeds No.10145/08 and 10146/08 of Palakkad SRO situated in Manappillykkavu, Yakkara Village.

2. Issue a direction directing the respondents 1-5 not to evict and disturb the petitioner and her tenants without due process of law.”

2. Petitioner has approached this Court alleging that she, being the wife of late Sri.Harihara Varma, is entitled to reside in the house bearing Door No.17/416 by name Panjajanyam. The complaint of the petitioner is that the 5th

respondent is threatening and harassing her and is forcing to evict her from the premises. It is further alleged that the 5th respondent, being the Deputy Sales Tax Commissioner as well as the Member of Sales Tax Tribunal, with the support and influence of the police officers, are trying to throw out the petitioner from the said building. Petitioner had already preferred a civil suit being O.S.No.309/2013, before the Munsiff Court, Palakkad seeking permanent prohibitory injunction, which came to be dismissed. It is submitted by the learned counsel for the petitioner that an appeal has already been filed before the District Court, Palakkad.

3. Counter affidavit is filed by the 5th respondent denying the allegations raised. According to the 5th respondent, she is the legally wedded wife of Sri.Harihara Varma and the property has been mutated in her name.

4. Apparently, this is a private dispute between two individuals regarding right to property, which cannot be adjudicated by this Court in a proceedings under Article 226 of the Constitution of India. The remedy of the petitioner is

to approach the Civil Court and obtain appropriate orders. The allegation that respondents 1 to 4 are forcibly trying to evict the petitioner has been denied by the 5th respondent. According to the 5th respondent, no such attempt has been made. She has filed a complaint only against anti social elements.

Under such circumstances, I do not think that this writ petition is maintainable and accordingly the same is dismissed without prejudice to the right of the petitioner to approach the Civil Court for appropriate reliefs.

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

