

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Smt.Veena.V.S., B.A., LL.M., Additional Munsiff

Thursday 29th October, 2015/7th Karthika, 1937

I.A.3581/2015 & I.A. 3901/2015 in O.S.N0.138/2015

Filed on 16.09.2015 & 08.10.2015

I.A. 3581/2015 (Filed on 16.09.2015)

Petitioner/Plaintiff:

Anilkumar.V @ Sivankutty, aged 49,
S/o Vijayan, Janaki Nilayam,
From-Kadamat, Thuravoor. P.O,
Kuthiyathodu Village,
Padinjattumkara North Muri,
Cherthala Taluk.

By Adv. Sri. K.Sabu Dinesh

Respondents/Defendants:

1. K. Purushothaman Nair, aged 55,
S./o Kesavakurup, Kadammatt,
Thuravoor. P.O, Kuthiyathodu Village,
Padinjattumkara North Muri,
Cherthala Taluk.
2. Arun.P.Nair, aged 25,
S/o K. Purushothaman Nair, of -do-.

By Adv. Sri.K.S. Hariharaputhran

I.A. 3901/2015 (Filed on 08.10.2015)

Petitioner/Plaintiff:

Anilkumar.V @ Sivankutty, aged 49,
S/o Vijayan, Janaki Nilayam,
From-Kadamat, Thuravoor. P.O,
Kuthiyathodu Village,
Padinjattumkara North Muri,
Cherthala Taluk.

By Adv. Sri. K.Sabu Dinesh

- Respondents/Defendants:
1. K. Purushothaman Nair, aged 55,
S./o Kesavakurup, Kadamatt,
Thuravoor. P.O, Kuthiyathodu Village,
Padinjattumkara North Muri,
Cherthala Taluk.
 2. Arun.P.Nair, aged 25,
S/o K. Purushothaman Nair, of -do-.

By Adv. Sri.K.S. Hariharaputhran

These petitions has been heard on 21.10.2015 and the court on 29.10.2015 passed the following:

COMMON ORDER

I.A.3581/2015:

2. The petition averments in brief are as follows: The petition is filed by the plaintiff to restore the status of the plaint schedule property at the time of suit by removing the constructions made by the defendants/respondents then after. In the petition, the petitioner alleged that the petitioner obtained an exparte injunction order in I.A.870/15 in this suit and obtained commission report describing the present nature and condition of the plaint schedule property at that time. But subsequently I.A.870/15 was dismissed on merits by hearing both parties and against the same C.M.A.21/15 was filed by the petitioner and the said appeal was allowed. Against the order of Hon'ble Sub Court the respondent filed O.P.(Civil) No.2162/15 before the Hon'ble High Court of Kerala which was dismissed on the ground of not pressed. While appeal was pending the respondents made constructions in the plaint schedule properties on the strength of

the dismissal order passed in I.A.870/15 passed by the trial court, respondent has no right to do so. Hence the petition.

3. Respondent filed objection with the following contentions. The petition is not maintainable either in law or on facts. The petitioner has no right to file the above petition. There is no order passed in C.M.A.21/15 entitling the petitioner to remove the structures in the plaint schedule property as prayed for in the petition. Against the order of dismissal of I.A.870/15 by the trial court, the petitioner preferred CMA.21/15 and the Hon'ble Sub Court by its judgment set aside the order only but not allowed the injunction application No.870/15. Therefore there is an order of injunction in I.A.870/15 passed by the Hon'ble Sub Court ,Cherthala restraining the defendants/respondents from constructing the building in the plaint schedule item. The respondents have not constructed any structures in the plaint schedule item illegally and unauthorisedly as alleged in the affidavit. So the petition may be dismissed.

4. I.A.3901/15:- This petition is filed by the plaintiff with a prayer to give direction to the Sub Inspector of police, Kuthiathode to take necessary measures for preventing the respondents from continuing the constructions in the plaint schedule property by violating the injunction order passed in this case. In this petition, the petitioner alleged the same facts as aforementioned in I.A.3581/15 and further alleged that the constructions made by the respondent is illegal by violating the injunction order and against the same, the petitioner filed a complaint before the police authorities

concerned. But they told the petitioner that without the direction of the court, they cannot do anything on the complaint. Hence the petition.

5. The respondents filed objection by contending that the petition is not maintainable either in law or on facts. There is no order passed in CMA.21/15 entitling the petitioner to get the direction to the Sub Inspector of police, Kuthiathode as prayed for in the petition. Against the order of dismissal in I.A.870/15 the petitioner preferred CMA.21/15 and the Sub Court set aside the order only but not allowed the injunction application. Therefore there is no order of injunction in I.A.870/15 restraining the respondents from constructing the building in the plaint item. Though the Ist respondent filed O.P.(Civil)No.2162/15 before the Hon'ble High Court of Kerala and when it was moved the Hon'ble High Court observed that there was no order of injunction passed against the respondents by the Sub Court, Cherthala restraining the respondents from constructing the structures in the plaint item. Thereupon the first respondent had withdrawn the said O.P. So the petition is not maintainable. Hence the petition may be dismissed.

6. No evidence adduced from both sides.

7. Heard both sides. Perused the records.

8. The specific case of the petitioner is that the respondents have made constructions in the plaint schedule property by violating the injunction order passed in I.A.870/15. But according to the respondents there is no injunction order granted by

appellate court in this case, even though appeal was allowed by setting aside the dismissal order passed by this court. The prayer in I.A.870/15 is that the respondent is restraining temporarily from constructing new building or alienating the plaint schedule property or create any document with respect to the plaint schedule property or removing any construction materials of demolished tharawad house or committing waste in the plaint schedule property until the disposal of the suit by an order of temporary prohibitory injunction. In the said I.A, even though exparte injunction order was granted by this court on 24..2..15 , subsequently after hearing both sides the said I.A was dismissed on 10..4..15. Against the same appeal was filed by the petitioner/plaintiff as C.M.A21/15 and Hon'ble Sub Court allowed the appeal by setting aside the order of lower court with a finding that the petitioner has a prima facie case . If the appeal is not allowed , irreparable injury will be caused to the petitioner. So it made clear that even though a prayer in I.A.870/15 was dismissed by this court, the said prayer was allowed by the Hon'ble Sub Court,Cherthala by setting aside the order and by allowing the appeal. So the contention of the respondent that the appellate court even though appeal is allowed by set asiding the dismissal order of the lower court on injunction is not tenable. Even though the respondents contended that the Hon'ble High Court also expressed the view that there is no injunction order passed in CMA.21/15 against the respondents, the respondent did not care to produce the same before the court to substantiate their contention.

9. From the records it is found that exparte injunction order in I.A.870/15 was in existence from 24.2.15 to 10.4.15 the date when the I.A was dismissed. Thereafter from 10.4.15 to 18.8.15 until the appeal was allowed, there was no temporary prohibitory injunction order was in existence against the respondents. So the constructions made during this period cannot be construed as a violation of injunction order. There is no evidence adduced before the court to make an inference that further constructions were made in the period when the injunction order was in existence. In the petition, the petitioner specifically alleged that the construction was made while appeal is pending. In fact at that time no injunction order was in existence. So the prayer in both petitions are not allowable.

10. From the above discussion, I am of view that the respondents are restrained from making further constructions only from the date of 18.8.15 . But the prayer in the petition is to remove all the constructions made after the institution of the suit. So it cannot be allowable. However, as per the order of Hon'ble Sub Court ,Cherthala allowing the appeal in CMA.21/15 by setting aside the dismissal order passed by this court, the prayers in the petitions were allowed from the date of order passed in C.M.A and then after the respondents are restrained from doing the activities mentioned in the prayers in I.A.870/15.

In the result, both petitions are dismissed. No order as to costs.

Dictated to the Confidential Asst.transcribed and typed by her, corrected by me
and pronounced in open court this the 29th day of October 2015.

Sd/-
Veena.V.S
Additional Munsiff.

Appendix: Nil

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Id/-
Additional Munsiff

// True Copy //

Typed by: KB
Compared by: KG

By Order,

Sd/-
Fair Copy Superintendent

Carbon Copy of Order in
I.A.3581/2015 & I.A. 3901/2015 in O.S.N0.138/2015
Dated: 29.10.2015