

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 5TH DAY OF DECEMBER 2016/14TH AGRAHAYANA, 1938

OP(C).No. 2945 of 2016 ()

OS 720/2016 OF II ADDITIONAL MUNSIF COURT, NEYYATTINKARA.
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PETITIONER:

JALAJA J.K.
W/O.LATE K.V BHADRAN,
KANNAMPURATH VEEDU
VELLARADA P.O, THIRUVANANTHAPURAM.

BY ADVS.SRI.BASANT BALAJI
KUM.S.ANOOJA

RESPONDENT(S) :

1. K.S.BAIJU PANICKER,
S/O.LATE SUSHEELA PANICKER,
SREE BHAVAN, NELLIRRESY, VELLARADA P.O,
THIRUVANANTHAPURAM - 695 505.
2. R.SUKUMARI,
D/O.LATE REGHUPATHY, SREE NIVAS,
ARATTAKUZHI, KOOHALI P.O,
THIRUVANANTHAPURAM - 695 505.
3. R.CHANDRIKA, CHANDRADARU,
ARATTAKUZHI, KOOHALI P.O,
THIRUVANANTHAPURAM - 695 505.
4. K.V RAJENDRAN,
S/O.VELAYUDHAN, RAJAMALLI,
ARATTUKUZHI, KOOHALAI P.O,
THIRUVANANTHAPURAM - 695 505.
5. K R VASANTHA, W/O.REGHUPATHY
ARUNODHAYAM, ARATTUKUZHI,
KOOHALI P.O, THIRUVANANTHAPURAM - 695 505.

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6. V.S ASHA,
D/O.SUNDARA PANICKER,
PANCHAVADI, VELLARADA P.O
THIRUVANANTHAPURAM - 695 505.
7. P.S DEEPTHY, D/O.PANKAJAKSHA PANICKER,
DEEPTHY, KOOHALI (PO),
THIRUVANANTHAPURAM - 695 505.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-12-2016, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

mbr/

OP(C).No. 2945 of 2016 ()

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE PLAINT IN O.S NO 720/2016 ON
THE FILE OF THE IIND ADDL MUNSIFF'S COURT,
NEYATTINKARA.

EXHIBIT P2 : TRUE COPY OF THE I.A NO 2704 OF 2016 ALONG WITH
THE PETITION.

EXHIBIT P3 : TRUE COPY OF THE COMMISSION REPORT AND SKETCH.

EXHIBIT P4 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
1ST DEFENDANT.

EXHIBIT P5 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE
1ST DEFENDANT.

EXHIBIT P6 : TRUE COPY OF THE SECOND COMMISSIONERS REPORT AND
PLAN.

RESPONDENT(S) ' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. RAMAKRISHNAN, J.

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O.P.(C).No.2945 of 2016
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Dated this the 5th day of December, 2016.

JUDGMENT

This is a petition filed by the petitioner seeking intervention of this court for speedy disposal of IA.No.2704/2016 in OS.No.720/2016 on the file of the IInd Additional Munsiff Court, Neyyattinkara under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner filed Ext.P1 suit as OS.No.720/2016 on the file of the 2nd Additional Munsiff Court, Neyyattinkara against the respondents for injunction restraining them from trespassing into plaint A schedule property and committing any act of waste and also from restraining them from blocking plaint B schedule way disturbing enjoyment of the plaintiff over the same and causing any obstruction to the user of the same. The petitioner also filed Ext.P2 IA.No.2704/2016 for interim injunction. A commission was taken out and the commissioner filed Ext.P3 report with sketch. The first respondent filed Ext.P4 written statement in the suit and Ext.P5 counter affidavit to the injunction application. The commissioner's report was remitted and the commissioner submitted Ext.P6 further report. Since there is no regular Presiding Officer, the injunction application is not being heard by the court below. So the petitioner has no other remedy except to approach this court seeking the following relief:

"That an order be passed directing the IInd Addl. Munsiff, Neyyattinkara to take up IA.No.2704/2016 in OS.No.720/2016 pending before and dispose of the same within a time to be fixed by this Hon'ble court".

3. Considering the nature of relief claimed, this court felt that the petition can be disposed of after getting a report from the concerned court regarding the present stage and time required for disposal of the same. Accordingly a report has been called for and the Principal Munsiff who is in charge of the 2nd Additional Munsiff Court, Neyyattinkara has sent a report which reads as follows:

"xxxx xxxxx xxxxx

It is humbly submitted that there is only one sitting in this court in one week, as I am holding charge alone of the court. The major number of respondents in the IA concerned have not yet appeared. Hence, the court may be granted four months time to dispose of the IA, considering the limited number of sitting days. The matter is submitted for favour of kind consideration and for favour of further necessary action".

4. It is seen from the report that there is no regular presiding officer for second Additional Munsiff Court and the Principal Munsiff is in charge of that court and conducting one day sitting in a week. It is also seen from the report that some of the respondents did not enter appearance and the officer wanted

four months time for disposal of that application.

5. Heard Sri. Basant Balaji, counsel appearing for the petitioner and perused the report.

6. Counsel for the petitioner submitted that since injunction was not granted the respondents are making obstruction to the pathway and causing damage.

7. It is an admitted fact that the suit was filed by the petitioner for injunction and also filed IA.No.2704/2016 for interim injunction and the court below had not granted an interim injunction. The first respondent entered appearance and filed counter. The counsel for the petitioner submitted that the respondent entered appearance but some of them did not file any objection. If the respondents have entered appearance, there is a duty cast on the court to pass some orders in the interim injunction application otherwise the purpose of the suit itself is likely to be defeated. So considering the circumstances, this court feels that the petition can be disposed of by directing the Principal Munsiff, who is in charge of Additional Munsiff, Neyyattinkara to dispose of the case within a time frame. So the petition is disposed of as follows:

The Principal Munsiff, Neyyattinkara who is in charge of 2nd Additional Munsiff Court, Neyyattinkara to expedite the disposal of IA.No.2704/2016 in OS.No.720/2016 pending before the 2nd

Additional Munsiff Court, Neyyattinkara as expeditiously as possible after procuring the presence of the parties, at any rate, within one month from the date of receipt of a copy of this judgment.

With the above directions and observations, this petition is disposed of.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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