

IN THE COURT OF THE SUB JUDGE, KOCHI-5.

Present:-

Smt.A.S.Mallika, B.Sc., LL.B., Sub Judge, Kochi.

Thursday, the 15th day of December 2016/24th Agrahayana 1938

C.M.A. No.23/2015

(Appeal against the Order in I.A. No.567/2015 in O.S. No.101/2015 dated 09.04.2015 of the Munsiff's Court, Kochi)

Appellants:-

1. K.J.Antony, aged 66 years, S/o.Joseph, residing Kadavinkal House, Athipposhi Desam, Rameswaram Village, Kochi Taluk, Mundamveli, Kochi
2. T.J.Antony, aged 67 years, S/o. John, residing at Thekkeveettil, Thoppumpadi Village, Thoppumpadi.P.O., Kochi Taluk, Kochi-682 005.

By Adv.D.Harish Chand

Respondents:-

1. Sabu Thomas, aged 51 years, S/o.Abraham Thomas, Meletharayil House, Kozhenchery Desom, Cherukol Village, Ranni Taluk, Pathanamthitta District.
2. V.M.Sunny, aged 40 years, S/o.V.M.Mathai, Vadakkumcherriyil House, Thattekkkad, Kuttampuzha, Kothamangalam Taluk.

By Advs.V.Rajendran Perumbavoor & N.Rajesh

This Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of the Code of Civil Procedure.

This Civil Miscellaneous Appeal is coming before me for hearing on 26.11.2016 in the presence of the counsel for both sides and having stood over for consideration to this day the Court delivered the following:-

JUDGMENT

This appeal has been preferred against the order of the Munsiff Court, Kochi in I.A.567/2015 in O.S.101/2015 by the defendants in the above case.

2. The averments in the petition in brief are as follows:

The above petition has been filed for interim prohibitory injunction. According to the petitioners, the plaint schedule property belonged to the first plaintiff by virtue of sale deed No.823/2008 of S.R.O., Kochi in which an old building situate. The first plaintiff demolished the building and constructed a new three storied building and almost all the construction work is over except few works. The said property is lying within well defined boundaries with a gate under his lock and key. He is a pastor of Vine Yard Pentecostal Church and 2nd plaintiff is the follower of the church and he is also a pastor. The 2nd plaintiff is now residing in the said building with the knowledge and consent of the first plaintiff and he is engaging in religious activities in the area where the above building situate. The defendants are local people. They are also following the Church in which the petitioners/plaintiffs are the pastors. But they did not like to permit the 2nd plaintiff to reside in the said

building. Thereby they have started causing problems to the peaceful life of the 2nd plaintiff in the said building. Though the first plaintiff tried to console the defendants they were not amenable for anything short of evicting the 2nd plaintiff from the building. For which the first plaintiff was not amenable. Now the defendants threatened that they will trespass upon the plaint schedule property and the building therein and obstruct peaceful possession and enjoyment of 2nd plaintiff in the said building. The defendants have no manner of right to cause any kind of obstruction to the peaceful residence of the 2nd plaintiff in the building in plaint schedule property. So it is highly necessary to pass an interim prohibitory injunction restraining the defendants from doing so and for which the above petition has been filed.

3. The respondents filed counter contending that the petitioners are not entitled for an order of injunction in respect of plaint schedule property. The first plaintiff created a trust deed which was registered as 223/2007 in the name Vine Yard Pentecostal Church in which the petitioner is the Managing Director and first respondent is the Secretary. The said trust is the public and religious trust created mainly for charitable purpose to promote various types of levels of communications, education, follow ship, training, public awareness etc. by different means. The first plaintiff was authorised to purchase movable and immovable properties or to lease or otherwise deal with properties and to construct building for and on behalf of the above trust. The plaint schedule property was purchased for the trust and it was being used as trust fund. The first petitioner made the respondents

and other members of the trust to believe that he purchased plaintiff schedule property for the trust. Since he being the pastor of the church, they have believed his words. The fund for constructing the church building in the plaintiff schedule building was arranged in the year 2010 by the first petitioner by selling the property of the trust in the year 2010. The sale price was used for construction of the church building in the plaintiff schedule property in which a board was erected as Vine Yard Pentecostal Church. But the respondents and other members of the Church came to know that the plaintiff schedule property was purchased in the name of the first petitioner and not in the name of the trust only recently though the said property was purchased and building was constructed by using the fund of the trust. So on getting knowledge regarding the same a private complaint was filed before the Judicial First Class Magistrate Court, Mattancherry and a crime was registered against the first petitioner by Fortkochi Police. In the personal capacity the first plaintiff has not acquired any right over the plaintiff schedule property. The respondents have not appointed 2nd petitioner as the paster of the Church and the first petitioner alone has no power to appoint him as the Pastor of the church without obtaining sanction from the committee members. So according to them, the petitioners are not entitled for the injunction sought for.

4. On the side of the petitioners Exts.A1 to A4 and Ext.C1 and C1(a) were marked and on the side of the respondents Ext.B1 to B15 were marked. After hearing both sides, the lower court has allowed the above petition.

5. Aggrieved by the order of the Munsiff Court, Kochi in I.A.567/2015, this appeal has been preferred on the following grounds among others.

6. According to them, the order of the Munsiff Court is not sustainable in law or on facts. Lower court has failed to see that the petitioner has not made out a prima facie case and balance of convenience in their favour and also the fact that if the injunction is granted, it will cause irreparable loss and injury to the appellants. The lower court has not considered the evidence adduced by the appellants that the first respondent is the President and 2nd petitioner is one of the members of Vine Yard Pentecostal Church and that the plaint schedule property has been purchased in the name of the first respondent for and on behalf of the above trust and it is a trust property. Lower court ought to have found that the first petitioner has no power to allow the 2nd respondent to do any acts in the plaint schedule property. The building scheduled as plaint schedule building is not the one which is shown in Ext.A1 sale deed. The lower court ought to have found that the Commissioner has not identified the plaint schedule building and also as to who else have stated to the Commissioner the fact that the 2nd petitioner and his family are residing in the plaint schedule building. So on the above grounds and the grounds to be urged at the time of hearing it is prayed by the appellants to allow the appeal and to dismiss the above petition.

7. The points raised for consideration are:

- 1) Whether the lower court is justified in holding that the petitioners in I.A.567/15 are entitled for temporary injunction as sought for?
- 2) Whether the order of the lower court in I.A.567/15 of Munsiff Court, Kochi is liable to be set aside?
- 3) Reliefs and cost.

8. **Points 1 and 2:** These two points can be considered together for convenience. As per the version of the petitioners/respondents the first petitioner is the owner of plaint scheduled property and the building therein, in which the 2nd petitioner and his family are residing and the 2nd petitioner is engaging in religious activities. But the case of the defendants/appellants is that the petitioners have no right over the plaint scheduled property and the building therein and it is the property of the trust namely Vine Yard Pentecostal Church and the said property was purchased for the trust. But the first petitioner has fraudulently included his name in the sale deed in respect of the plaint schedule property while purchasing the property. Actually he was entrusted to purchase the said property for and on behalf of trust, since he was managing the affairs of Vine Yard Pentecostal Church as the President of the said church. He was purchasing and selling properties of the church and the plaint schedule property was also purchased for the church. But he has made the other office bearers and members of the trust to believe that he is purchasing

the property for the church. But he has fraudulently created the sale deed in his name in the personal capacity and that aspect has come to the notice of the members of the trust and other believers only recently. According to them, the said property and the building therein is in the possession and enjoyment of the trust and the 2nd petitioner is not possessing the same for and on behalf of the first respondent.

9. In Ext.C1 is Commission Report it is stated that the plaint schedule property lies on the side of the Fortkochi Beach Road in which there is a three storied building and its construction was almost completed except few works. It is also reported that in the 2nd floor of the building the 2nd plaintiff with his family is residing and in the other two floors some articles such as tables, chairs etc are seen kept. According to the respondents, the building mentioned in the commission report is not the building situated in the plaint schedule property. Ext.A1 is the sale deed No.823/2008 executed in favour of Sabu Thomas who is the first plaintiff in the above case and the plaint schedule property is 2.71 ares equivalent to 6.700 cents in Fortkochi Village in survey No.806/1 in which the building bearing No.C.C.11/1366 situate. The plaint schedule property is 6.700 cents of property in survey No.806/1 of Fortkochi Village with a newly constructed three storied building bearing No.11/1366 C1, 1366 C2 and 1366 C3. It may be the building newly constructed after demolishing the old building and the building number shown in the title deed is same as that mentioned in the plaint schedule except the additional number given for the tree floors. The respondents in the above petition

could not show that the building noted in Ext.C1 is not the building situate in the plaint schedule property. Ext.A1 would show that the said property was purchased by first petitioner in his personal capacity and it is not stated therein that it was purchased for and on behalf of Vine Yard Pentecostal Church in his capacity as the President of the said Church. The respondents have produced Exts.B1 to B13 and B14(series) to show that the first petitioner was the pastor of Vine Yard Pentecostal Church and he was managing the affairs of the said church in his capacity as President. It is true that Ext.B10, B11, B12, B13 etc. are the copies of the title deeds in respect of the transaction of purchasing and selling properties in the name of Vine Yard Pentecostal Church by the first petitioner. According to the respondents, the members of the Trust and other believers believed that the plaint scheduled property was purchased by the first petitioner not in his personal capacity but for the church and only recently they came to know that he has fraudulently created the said document. But at this stage it cannot be concluded that he has created Ext.A1 document fraudulently and that he has actually purchased the plaint schedule property for the above church by utilising the fund of the above church. From Ext.A1 it could be seen that the plaint schedule property is now owned by the first petitioner and in Ext.C1 it is reported that the 2nd petitioner with his family is now residing therein. So it is prima facie proved that the petitioners are in the possession of the plaint schedule property and the building therein and the respondents could not show that the plaint schedule building is in their possession and enjoyment

and that they have been conducting religious activities in the above building for and on behalf of Vine Yard Pentecostal Church. The respondents could not show that they have any right or title over the plaint schedule property or even possession of the same. The defendants contended that plaint schedule property is not the property owned by the first petitioner and they are also challenging the possession of the same by the 2nd petitioner therein. So the apprehension of the plaintiff/petitioners that the respondents may cause obstruction to the peaceful possession and enjoyment of the same is found to be well founded. If the injunction is granted no irreparable loss and injury will be caused to the respondents as they could not make out a case that they are in possession of the plaint schedule property and the building therein. On the other hand the petitioners could make out a prima facie case that the plaint schedule property is owned by the first petitioner and the 2nd petitioner is possessing the same for the 1st petitioner and if the injunction is not granted it will cause irreparable loss and injury to the petitioners. So balance of convenience is in their favour. Hence I find that the lower court has rightly entered into a finding that the petitioners are entitled for an injunction and hence I am of the view that no interference is called for in the order passed by the lower court. So the order of the Munsiff Court, Kochi in I.A.567/2015 is not liable to be set aside. Points 1 and 2 are found accordingly.

10. **Point No.3:** In the light of the findings and discussions made above I hold that as the order of the Munsiff Court, Kochi in I.A.567/2015 is not liable to be set aside the appeal is liable to be dismissed.

11. In the result, this appeal dismissed accordingly. In the facts and circumstances of the case, there is no order as to costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 15th day of December, 2016.

Sd/-

**A.S.MALLIKA,
SUB JUDGE.**

Appendix:- Nil.

Sd/-

**SUB JUDGE.
(By Order)**

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