

IN THE COURT OF THE SUBORDINATE JUDGE OF THALASSERY
Present : Smt. Veena.K.B., Addl. Subordinate Judge, Thalassery
Saturday, the 30th day of October, 2021/8th Karthikam,1943

A.S.No. 20/2016

- | | |
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| 1 Adhip Narayanan, S/o Late Narayanan, aged 42 years,
residing at Shanthi, Kadirur amsom and desom,
Thalassery Taluk. |] Appellants/
] Plaintiffs
] |
| 2 Ramakrishnan, S/o Govindan, aged 65, Puliyullathil
House, Kadirur amsom and desom, Thalassery Taluk. |]
]
] |

Vs.

- | | |
|---|--------------------------------|
| 1 President, Thanbihul Islam Madrassa Committee, P.O.
Kadirur, Kadirur amsom desom, Thalassery Taluk. |]
] |
| 2 Kadirur Grama Panchayath, represented by its Secretary,
P.O. Kadirur, Kadirur amsom, desom, Thalassery Taluk |] Respondents/
] Defendants |
| 3 District Collector, Kannur. |] |

On appeal against the Judgment and decree of the Munsiff Court of Thalassery, dated 21th day of November, 2015 and made in:

OS.320/2012

- | | |
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| 1 Adhip Narayanan, aged 39 years, S/o Late T.V. Narayanan,
Shanthi, Kadirur amsom desom. |] Plaintiffs
] |
| 2 Ramakrishnan, aged 63, Puliyullathil House, S/o
Govindan,Kadirur amsom and desom. |]
]
] |

Vs.

- | | |
|---|--------------|
| 1 President, Thanbihul Islam Madrassa Committee, P.O. Kadirur |] |
| 2 Kadirur Grama Panchayath, represented by its Secretary, P.O.
Kadirur |] Defendants |
| 3 The District Collector, Kannur. |] |

This appeal coming on the 25th day of October 2021 for hearing before me, in the presence of Sri. O.G. Premarajan and T.K. Rathnakaran Advocates for the Appellants; of Sri. V.P. Ali for the 1st respondent; of Sri. Prasad.K.K Advocate for the 2nd Respondent; of Smt. Preethi Parambath Addl./Dist. Govt. Pleader and Public Prosecutor for the 3rd respondent; and having stood over for consideration till this day; the court delivered the following:

J U D G M E N T

This is an appeal preferred against the judgment and decree of Munsiff's Court, Thalassery in OS No.320/2012 whereby the suit was dismissed with costs.

2. **The gist of the plaint averments is as follows:** The plaintiffs are representing 114 residents of Kadirur Grama Panchayath in Thalassery, which according to the plaintiffs, is dominated by the folk belonging to Hindu community. The plaint schedule property belongs to the 1st defendant. Now attempts are being made to convert a Madrassa into a Mosque without following the due procedure of law. The plaintiffs had took up the matter with the 2nd defendant, but invain. The proposed construction which is for the purpose of worship is against the proviso to Rule7(8) of the Kerala Panchayath Building Rules, 2011, which contemplates a previous sanction to be accorded by the 3rd defendant, before starting construction of any building for the purpose of worship and other religious matters.

3. As the grievance by the plaintiffs remained unaddressed by the 2nd and 3rd

defendants, the plaintiffs moved the Hon'ble High Court by way of a Writ Petition. Though the 1st defendant attempted to commence the construction activities, it was prevented due to the timely intervention of the police as alerted by the plaintiffs regarding the pendency of the Writ Petition. It is alleged that, again on 19.09.2012, the 1st defendant started the illegal construction and has unloaded building materials for the same. So, it may create some communal tension in the locality as it is apprehended that the 1st defendant may carry out the illegal construction in the plaint schedule property. Hence, the suit.

4. **The gist of the written statement is as follows:-** It is false to allege that the 1st defendant ever attempted to convert a Madrassa into a Mosque. The attempt by the plaintiffs is to somehow obstruct the 1st defendant from making any construction in the property which he is illegally entitled to. The allegations in the plaint that the particular area is sensitive to religious impulses is made only to mislead the court. It is further contended that the first defendant never made any attempt to carry out any illegal construction in the plaint schedule property as alleged. In fact, the 1st defendant proposed to construct a moral education centre for the benefit of the Muslim Community in that area, for which a previous approval of the plan is not required, still the 1st defendant informed the panchayath about the proposed construction and also the plan of proposed building was also submitted. It is absolutely baseless to allege that the proposed construction will lead to communal

tension and religious disharmony. The plaintiffs managed to mislead the authorities concerned and the 1st defendant was forced to stop the construction. As there is no illegality in proceeding with the construction, the plaintiffs have no cause of action for filing such a suit. In fact, the first defendant is put to irreparable loss and injury as the said committee is prevented from utilizing the property in a lawful manner. Hence the suit is only to be dismissed.

5. The 2nd defendant who is only a formal party to the suit filed written statement to the tune that the matter was already informed and the report has been submitted to the 3rd defendant.

6. The trial Court decided the suit on the basis of the oral evidence tendered by PW1 and PW2 and documents as Exts. A1 to A3 were marked from the side of the plaintiffs. The report and plan submitted by the Advocate Commissioner is exhibited as C1 and C2. From the side of the 1st defendant, he examined himself as DW1. No documentary evidence is adduced from his side.

7. On the basis of the above evidence, the trial Court dismissed the suit with costs.

8. The grounds of appeal are as follows:-

a) The trial court erred in appreciating and analysing the oral and documentary evidence in this case.

b) The trial court ought to have found that the said locality wherein the plaint schedule property is situated is a religiously sensitive area being dominated by population belonging to Hindu community.

c) The trial court ought to have found that the 1st defendant made an attempt to convert a Madrassa in to a Mosque in violation of proviso to Rule 7(8) of the Kerala Panchayath Building Rules, 2011.

9. After hearing both sides and after having gone through the records available in this case, the following points are raised for consideration in this appeal:-

1) Does the impugned judgment and decree passed by the trial Court calls for any interference, if so, to what extent?

2) What is the order as to costs?

10. **Point No.1:-** The case of the plaintiffs' is that they are among the few, who belongs to a particular locality the majority of which professes the Hindu religion. The apprehension of the plaintiffs is that the construction of a Mosque in the plaint schedule property will destruct the communal harmony. The further definite case of the plaintiffs is that the 1st defendant is proposing to convert a Madrassa into a Mosque without obtaining the previous sanction as contemplated by the Kerala Panchayath Building Rules.

11. On the other hand, the 1st defendant has got a case that since the plaint schedule property absolutely belongs to the said committee, the plaintiffs cannot be allowed to obstruct the proposed construction for which the plan was submitted with the 2nd defendant. It is also contended that the proposed construction is not a mosque rather it is a moral education center for the upliftment of the children belonging to Muslim community in the said area and the plaintiffs are misguided and thus want to stop the lawful construction which was proposed to be carried out in the plaint schedule property. The allegations in the plaint that the particular area is sensitive to religious impulses is made only to mislead the court.

12. The above being the facts, this court has gone through the evidence as well as the judgment rendered by the trial court. It can be seen that the trial court has correctly appreciated the facts and the law on the point. The trial court got into the crux of the dispute which is only with regard to the nature of the construction. The trial court has also aptly found that the oral evidence is not of much relevance in the facts of this case. The trial court also correctly got into the question as to whether the plaintiffs can invoke the relevant proviso to Rule 7(8) of the Kerala Panchayath Building Rules, 2011 and entered into a finding that the said proviso applies to area within the 'Security Zone' and held that in the case on hand there is absolutely no

avermment in the plaint that the building sought to be constructed in a 'Security Zone'. If that be so, as rightly found by the trial court going by the proviso, the plaintiffs are not entitled for the equitable and discretionary relief of Injunction as prayed for.

13. At the time of hearing of this appeal, the learned counsel for the plaintiff, submitted that as specifically mentioned in the plaint there was a writ Petition filed before the Hon'ble High Court of Kerala as WP© No.34741/2011 and subsequent to the hearing the learned counsel also produced the copy of the order in the above writ petition. I have meticulously gone through the said judgment by the Hon'ble High Court, and it can be seen that the prayer in the writ petition was to direct the second respondent therein, the District Collector, to take immediate action on representation filed by the plaintiffs within a period of two months from the date of receipt of the copy of the judgment. The judgment by the Hon'ble High Court of Kerala is dated 22.02.2016. It also remains a fact that there was no mention before the Hon'ble High Court about the pendency of this civil proceedings as is clear from the judgment by the Hon'ble High Court. So, by taking up a contention that there is such a direction to the District Collector, the plaintiffs in this case will not by itself entitled for the equitable relief of injunction, as they have failed to prove their case as has been found by the trial court.

14. The learned counsel for the plaintiffs drew the attention of this court to S.235(A) of the Kerala Panchayath Raj Act, 1995 which empowers the Authorities to make rules for regulating the construction of building and as per the proviso to the said rules there is regulation for the construction of places to worship which might cause communal tension.

15. In that regard, it can be seen that it was in pursuance of the said section, that Rule 7(8) of the Kerala Panchayath Building Rules, 2011 was framed and the criteria for the application of the above rule being that the proposed construction is to be within any 'Security Zone'. Here there is absolutely nothing before the court to enter a finding that the plaint schedule property is situated in any such 'Security Zone'. The argument that the 1st defendant never produced any approved plan also is not of any relevance as the plaintiffs have even failed to prove that the particular site is within the Security Zone. Yet another fact is that according to the plaintiffs, the 1st defendant is trying to convert a madrasa into a mosque whereas as per the Commissioners report there was no such standing building situated in the plaint scheduled property. If that be so, in view of the correct fact finding entered into by the trial court and upon the facts discussed above, this court is of the definite view that the appeal has to be dismissed by confirming the judgment and decree passed by

the trial Court. Hence, this point is answered accordingly.

16. **Point.No.2:-** See the decretal portion:-

In the result,

The appeal is dismissed with costs and the judgment and decree of the
Munsiff Court, Thalassery in OS.320/2012 stands confirmed.

(Dictated to the confdl. Asst., transcribed and typed by her, corrected and pronounced by
me, in open court on this the 30th day of October, 2021).

Sd/-

ADDL. SUBORDINATE JUDGE.

//True copy//

ADDL. SUBORDINATE JUDGE
THALASSERY.

Fair/Carbon Copy of Judgment in
AS No.20/2016 Dated :30.10.2021