

IN THE COURT OF THE MUNSIFF, KAYAMKULAM
Present: Sri. Biju kumar. C.R., B.Com., LL.B, Munsiff
Wednesday, the 21st December 2016/30th Agrahayana 1938

OS. 275/2014

(Filed on 01/07/2014)

(Suit restored as per order in I.A.1767/16 dtd.25/07/16)

Plaintiffs : 1. Fiji Rajeev, 47 years, D/o Late Chandran @ Chandrangathan, Now residing at 'Krishna' Chirakadavom Muri, Kayamkulam village, From Chakkittayil House, Malamel bhagom muri, Keerikkadu village.

2. Rethika B Lekshmi, 14 years, D/o Late Binu chandran, Chakkittayil House, Malamel bhagom muri, Keerikkadu village, Minor rep.by Grandmother (next friend) C.N. Leelamoni, 65 years, W/o Chandrangathan of ..do... ..do..

(By Adv. Sri. N. Raveendran & Adv. Sri. M.R. Salim)

Defendants : 1. Binu Mathai, 60 years, S/o Late V. Mathai, Mamoottil House, Kunnam muri, Mavelikara village, Mavelikara Taluk.

2. Senior Regional Manager, Hindustan Petroleum Corporation Ltd., Cochin Regional Office, Ernakulam North, Ernakulam District

(Exparte)

This suit is coming on for final hearing on 01/12/2016 and on 21/12/2016 the court delivered the following:

JUDGMENT

The suit is for declaration and for injunctions prohibitory and mandatory.

2. The averments in the plaint in short are as follows:- The 1st plaintiff is the sister of the 2nd plaintiff's deceased father, Binu Chandran. The 2nd

plaintiff is a minor and she is represented by her grandmother as next friend. The plaint schedule property previously belonged to Malankara Syrian Catholic Arch Diocese of Thiruvananthapuram. In the year 1954, the plaint schedule property was taken on ground rent by one Mr.V.Mathai, who is the father of the 1st defendant, from its previous owner. Thereafter, Sri. V. Mathai started a fuel pump in the plaint schedule property for selling petrol, high speed diesel, oil and allied products of Hindustan Petroleum Corporation Ltd. Under the name and style of 'M/s V.Mathai'. The 2nd defendant is the Senior Regional Manager of Hindustan Petroleum Corporation Ltd. The 1st defendant's father started the fuel pump in the plaint schedule property after obtaining a licence from Hindustan Petroleum Corporation Ltd. in his name. Mr.V.Mathai died on 18.02.1994 and after his death, the ownership of the fuel pump in the plaint schedule property and all the rights and interests enjoyed by him over the plaint schedule property were vested upon the 1st defendant, his siblings and mother as the legal heirs of Mr.V.Mathai. Later, all the above mentioned rights over the plaint schedule property and the fuel pump therein devolved upon the 1st defendant by virtue of release deed No. 3295/95 dated 13.02.1995 executed by his siblings and mother. Thereafter, the fuel pump in the plaint schedule property was run by the 1st defendant. While the 1st defendant was running the fuel pump in the plaint schedule property, he faced with several difficulties to run the same smoothly. Thereafter, on 17.06.1998, he had entered into an agreement with the 1st plaintiff's father, Late Mr. Chandran @ Chandrangadan and thereby transferred the fuel pump in the plaint schedule property to the 1st plaintiff's father. The transaction embodied in the said agreement was for a consideration of Rs.20,00,000/-. From the said total consideration, Rs. 14,25,000/- was paid

in cash by the 1st plaintiff's father to the 1st defendant on the date of the said agreement itself and the balance amount of Rs. 5,75,000/- was paid through four cheques. The mode of payment is clearly mentioned in the said agreement. The 1st defendant received the entire consideration mentioned in the said agreement and handed over the plaint schedule property and the patrol pump therein to the 1st plaintiff's deceased father, Chandran @ Chandrangadan. By virtue of the said agreement dated 17.06.1998, the 1st plaintiff's deceased father became in possession of the plaint schedule property and the fuel pump therein. Thereafter, the 1st plaintiff's deceased father Chandran @ Chandrangadan and the 1st plaintiff's deceased brother, Sri. Binu Chandran were conducting the fuel pump in the plaint schedule property with the existing licence in the name of 1st defendant's deceased father, Mr.V.Mathai. There is a bank account in the name of the 1st defendant at the Federal Bank Ltd., main branch, Kayamkulam with account No. 10540200005240. All the financial transactions pertaining to the fuel pump in the plaint schedule property are being conducted through the said account. After the execution of the above mentioned agreement, the said bank account was operated by the 1st plaintiff's deceased brother, Binu Chandran on the basis of an authorization given by the 1st defendant. While so, the 1st plaintiff's deceased father, Chandran derived title over the plaint schedule property by virtue of an exchange deed No. 1275/2001 dated 18.05.2001 executed by the said chandran and the previous owner of the plaint schedule property. With the execution of the above mentioned agreement dated 17.06.1998 and exchange deed No. 1275/2001 dated 18.05.2001, the 1st plaintiff's deceased father became the absolute owner in possession of the plaint schedule property and the fuel pump therein. The license for the fuel pump in plaint

schedule property and the bank account of the said pump alone are retained in the name of the 1st defendant and the 1st defendant was co-operating with the 1st plaintiff's deceased father for renewing the licence and for operating the above said bank account. The 1st plaintiff's brother, Binu Chandran died on 10.10.2010. It was an untimely death. After his demise, the pump in the plaint schedule property was conducted by 1st plaintiff's father, Chandran. After Binu Chandran's death, the 1st defendant gave authorization to the 1st plaintiff's mother Leelamoni to operate the above said bank account. The smooth operation of the above said bank account is highly necessary and inevitable for the smooth running of the pump in the plaint schedule property because all the financial transactions including RTGS are being conducted through the said account. While so, the 1st plaintiff's father was also died on 13.01.2014. At the time of his death, the 1st plaintiff's father had title and possession over the plaint schedule property by virtue of exchange deed No. 1275/2001 dated 18.05.2001 and had absolute ownership over the fuel pump in the plaint schedule property by virtue of the agreement dated 17.06.1998. The 1st plaintiff's father executed Will No. 55/III/12 dated 25.04.2012 during his life time bequeathing his assets to plaintiff Nos. 1 and 2 and the 1st plaintiff's mother, C.N.Leelamoni. It is a registered Will and has come into operation after the death of 1st plaintiff's father, Mr. Chandran. In the said Will, the rights over the plaint schedule property and the petrol pump therein are set apart to the share of the plaintiffs as item No. B in schedule No. 2 and item No. B in schedule No.3. Therefore, after the death of the 1st plaintiff's father, the plaintiffs got all the rights over the plaint schedule property and the fuel pump therein which were left behind by deceased Chandran. So at present, the plaintiffs have joint title over the plaint schedule property and joint ownership over the

fuel pump in the plaint schedule property. The plaint schedule property and the structures therein are now under the possession and enjoyment of the plaintiffs. At present, as per the recitals in the agreement dated 17.06.1998, the plaintiffs have every right to conduct the fuel pump in the plaint schedule property. The 1st defendant is duty bound to observe all the recitals incorporated in the said agreement without any default. So the 1st defendant is duty bound to co-operate with the plaintiffs as done earlier for the smooth conduct of the petrol pump in the plaint schedule property by discharging all of his duties casted upon him by the above mentioned agreement. But the 1st defendant, with an intention to harass the plaintiffs and to snatch away money from the plaintiffs, freezed the above mentioned bank account of the petrol pump in the plaint schedule property and thereby caused to stop the functioning of the petrol pump in the plaint schedule property and thereafter filed a false suit before the Hon'ble District (Vacation) Court, Alappuzha as O.S.No. 192/2014. The 1st defendant had filed the said suit suppressing real facts and challenging the right, title and possession of the plaintiffs over the plaint schedule property and the right of the plaintiff to conduct the petrol pump in the plaint schedule property. So it became highly necessary to declare the right, title and possession of the plaintiffs over the plaint schedule property and their right to conduct the petrol pump in the plaint schedule property. As stated above, all the financial transactions of the petrol pump in the plaint schedule property are required to be done through the Bank account with account No. 10540200005240 at Federal Bank Ltd., Main branch, Kayamkulam. So for the functioning of the petrol pump in the plaint schedule property, the smooth operation of the said bank account is highly necessary. As per the agreement dated 17.06.1998, the 1st defendant is duty

bound to ensure the smooth operation of the said account. The 1st plaintiff's brother, Binu Chandran was operating the said account upon an authorisation given by the 1st defendant. After the death of Sri. Binu Chandran, the 1st defendant gave authorization to the 1st plaintiff's mother, C.N.Leelamany. But after the death of 1st plaintiff's father, the 1st defendant froze the said account by violating the recitals in the agreement dated 17.06.1998. The said act of the 1st defendant is in gross violation of the mandatory recitals in the said agreement and will amount to breach of contract. At present, as per the agreement dated 17.06.1998, the plaintiffs have every right to make use of the said bank account for the smooth conduct of the petrol pump in the plaint schedule property. But, at present, the plaintiffs are forced to stop the functioning of the petrol pump in the plaint schedule property due to the freezing of the above mentioned bank account by the 1st defendant. Such conduct of the 1st defendant will amount to breach of contract embodied in the agreement dated 17.06.1998 and so the plaintiffs are entitled to get the said contract enforced through the court. In the said circumstances, it is highly necessary to issue permanent mandatory injunctions directing the 1st defendant to remove the freezing of account No. 10540200005240 at Federal Bank Ltd. Main branch, Kayamkulam. Now, the 1st defendant frequently obstructs the plaintiffs from conducting the petrol pump in the plaint schedule property. Plaintiffs have got reliable information that the 2nd defendant, under the influence of the 1st defendant, is in hasty preparation to cancel the licence of the petrol pump in the plaint schedule property. Such acts of the defendants are required to be restrained by a decree of permanent prohibitory injunction. Otherwise, the plaintiffs would be put to irreparable loss, injury and hardships. The contract embodied in the agreement dated 17.06.1998 is a concluded contract and

both parties to the said contract and their successors have every right to enjoy the fruits of the same. One party and his successors have no right or authority to prevent the other party and his successors from enjoying the fruits of the contract embodied in the agreement dated 17.06.1998. The 1st defendant purposefully violated the mandatory recitals in the said agreement and thereby put the plaintiffs to severe hardships. In such a circumstances the only way open to the plaintiffs is to approach this court and therefore, the plaintiffs had instituted the suit. Plaintiffs have every right to get all the reliefs sought in the plaint. From 17.06.1998 onwards the 1st defendant has no role in conducting the petrol pump in the plaint schedule property. In furtherance of the agreement dated 17.06.1998, the 1st plaintiff's father and brother conducted the petrol pump in the plaint schedule property and thereafter the plaintiff had got right to conduct the same. The 2nd defendant is very well aware about the said aspects. The plaintiffs' predecessors and then the plaintiffs had conducted the petrol pump in the plaint schedule property utilizing their own man power and money. In such a circumstance, the plaintiffs are entitled to get transferred the licence of the petrol pump in the plaint schedule property into their names. As per the mandatory recitals in the agreement dated 17.06.1998, the 1st defendant can't do anything leading to the loss of licence of the petrol pump in the plaint schedule property. But now the 1st defendant plays bargaining tricks by taking advantage of being the licence in his name. In fact, the agreement dated 17.06.1998 can be treated as a consent of the 1st defendant to transfer the licence of the petrol pump in the plaint schedule property to the plaintiffs. The 2nd defendant can very well be acted upon it also. However, even after repeated demands from the side of the plaintiffs, the 2nd defendant is not doing so under the influence of the 1st

defendant. So the plaintiffs also sought the issuance of a permanent mandatory injunction directing the 2nd defendant to transfer the licence of the petrol pump in the plaint schedule property into the names of the plaintiffs. The suit is liable to be decreed with costs.

3. The 2nd defendant set ex parte at the inception. Though the 1st defendant had filed a written statement, he also was set ex parte when the suit listed for trial. Therefore, the case was adjourned for evidence of the plaintiffs.

4. The 1st plaintiff had filed affidavit in lieu of chief examination. Exts.A1 to A7 and C1 were marked on the side of the plaintiffs. Heard the counsel for the plaintiffs.

5. In the affidavit in lieu of chief examination, the 1st plaintiff reiterated her averments in the plaint. The defendants not turned up to controvert the evidence adduced by the plaintiffs. Exts.A1 to A7 prove the case of the plaintiffs. There is no reason to disbelieve the evidence adduced by the plaintiffs. The plaintiffs are entitled to a decree as prayed for. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

In the result, the suit is decreed:-

- (a) declaring the right, title and possession of the plaintiffs over the plaint schedule property and the buildings therein,
- (b) granting a declaration that the plaintiffs are entitled to conduct the petrol pump in the plaint schedule property as per agreement dated 17.06.1998,
- (c) directing the 1st defendant by a mandatory injunction to

remove the freezing of account No. 10540200005240 at Federal Bank Ltd. Main branch, Kayamkulam,

(d)granting a mandatory injunction directing the 2nd defendant to transfer the licence of the petrol pump in the plaint schedule property into the names of the plaintiffs,

(e)restraining the 1st defendant by a decree of permanent prohibitory injunction from causing any obstruction to the smooth conduct of the petrol pump in the plaint schedule property and restraining the 2nd defendant by a permanent prohibitory injunction from cancelling the licence of the petrol pump in the plaint schedule property; and

(f) directing the parties to bear their respective costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on 21st day of December, 2016.)

Sd/-
BIJUKUMAR.C.R
MUNSIFF

APPENDIX :

Exhibits for Plaintiff

A1	25/04/2012	Photocopy of Will deed
A2	17/06/1998	Agreement
A3	- -	Certified copy of Exchange deed
A4	- -	Invoices of Hindustan Petroleum Corporation Ltd.

A5	26/03/2014	Tax receipt
A6	23/04/2016	Tax receipt
A7	06/03/2013	Receipt

Exhibits for Defendant - Nil

Witness for Plaintiff: Nil

Witness for defendant - Nil

Court Exhibits

C1 - 11/07/2014 - Commission report filed by
Adv. Sri. Unni J Warrieth.

Id/-
MUNSIFF

(True Copy)

MUNSIFF

Typed by : Sajitha.
Compd. By: