

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY
Present:- Sri.Praveen Kumar.G, BA.L, LL.B, Munsiff.
Monday, the 26th day of July, 2021/the 04th day of Sravanam, 1943.

I.A No. 2538/2019 in O.S No.111/16

Between

Petitioners/Plaintiffs:

1. Amrithendra Guptha, Cherukara veedu,
Neendakara muri, Neendakara village,
Karunagappally taluk
2. Sreeja, of -do-

By Advs.Sri.S.Jayaprakash ,Smt.R.Maya and
Smt.P.Deepa,

And

Respondent/Defendant :

1. Prathap, Maithree Nagar-125, Prathibha,
Ashramom.P.O, Kollam East village, Kollam
taluk
2. Nirmala Hentry, Nirmala Bhavan,
Neendakara muri, Neendakara village,
Karunagappally taluk

By Adv. Smt. J Bushra for D1
Adv.Jayachandra Tilak.B. for D2

This petition is filed by the petitioners under order 39 and Rule 2 A CPC for declaring the documents in SRO chavara is null and void and for consequential declaration of title recovery of possession and perpetual injunction.

This petition is coming on for final hearing before me on 26/07/2021 and on the same day the court passed the following:-

ORDER

Application filed by the plaintiffs under Order 39 Rule 2 A C.P.C. Respondents in the application are the defendants in the suit. Parties are referred to as the “plaintiffs” and the “defendants”, as in the suit.

2. The suit is for a declaration that document number 42/2010 of S.R.O, Chavara, is null and void and for consequential declaration of title, recovery of possession and perpetual injunction.

3. Vide order dated 04-07-19 in IA 2906/2018, the second defendant herein was restrained from alienating the plaint schedule property till the disposal of the suit. The grievance of the plaintiffs, in support of the application, is that subsequently, the second defendant executed 3 registered sale deeds transferring the plaint schedule property, essentially in violation of the interim order. Action be taken against her under Order 39 Rule 2 A C.P.C, is the request. No relief is sought against the first defendant.

4. The first defendant has not filed any objections to the application.

5. The second defendant filed a statement of objections, contending *inter alia* that the suit itself is not maintainable and the order dated 04-07-19 was obtained by misleading the court. It is contended that the second defendant is the exclusive owner of the plaint schedule property and she has the authority to transfer the same as per her wish. Those alienation, it is contended, is not liable for any proceedings. It is further pointed that the second defendant had

borrowed Rs, 20,00,000/- (Rupees Twenty Lakh Only) from her husband's sister on two occasions and the documents in question have been created in her name in lieu thereof, for meeting the educational expenses of his son. The same was with a bonafide intention and not with any ulterior motives so as to disobey the injunction order, it is contended.

6. Exts.A1 to A3 documents have been marked on behalf of the plaintiffs as part of the inquiry. No evidence has been adduced on behalf of the defendants.

7. Heard both sides.

8. Following points arise for determination.

1. Whether the second defendant willfully disobeyed the order of temporary injunction dated 04-07-19?
2. Is she liable to be proceeded under Order 39 Rule 2 A C.P.C?
3. Order ?

9. **Points 1 and 2**

The order in question is to the following effect.

.....Additional second defendant is restrained from alienating the plaint schedule property, creating any document in respect of the plaint schedule property, or changing its present lie and nature till disposal of the suit.....

This order was passed on 04-07-19 after hearing both sides.

10. The suit was originally instituted against the first defendant alone and later, the second defendant was impleaded vide order dated 25-02-19 in

I.A.2907/18, on the allegation that the plaint schedule property was transferred by the first defendant to the second defendant pending *lis*. The grievance of the plaintiffs is that thereafter, the second defendant created 3 documents in respect of the plaint schedule property. It would appear that one of them, sale deed number 645/19 dated 07-03-19, was prior to the passage of the interim order dated 04-07-19. The other two sale deeds are dated 30-07-19 and 03-10-19, the certified copies of which have been marked as Exts. A1 and A2. Ext.A3 is the sale deed by which the first defendant transferred the plaint schedule property to the second defendant. The execution of Exts. A1 and A2 is admitted and the documents would show that the second defendant transferred portions of the plaint schedule property for consideration. So long as the second defendant has admitted the execution of the documents, it is clear that the property which was prohibited from being alienated, was transferred subsequently.

11. The case (in the written objections) of the second defendant is mainly twofold. It is contended that the plaintiffs have misled the court and obtained the interim order, which is bad in law. Secondly, that the second defendant had to execute the documents for meeting the educational expenses of her son and thus, the transfer is a bonafide one with no intent to undermine the authority of the court.

12. Learned counsel for the second defendant argued that the suit itself is devoid of merits, as the second defendant is the exclusive owner of the plaint

schedule property and the plaintiffs have no right or interest over the same. According to the learned counsel, the order dated 04-07-19 itself is unsustainable, being contrary to real facts. The second defendant did not have any knowledge of the order against alienation and she could know of it only when this prosecution petition was filed. Finally, it is pleaded that the second defendant would take the necessary steps for reconveying the property so as to render the effect of the interim order valid.

13. Learned counsel for the plaintiffs, on the other hand, pointed out that the second defendant having transferred the plaint schedule property subsequent to the interim order, a clear case of willful disobedience is made out and she be punished.

14. When this court specifically restrained alienation of the plaint schedule property after hearing the second defendant too, and when documents were executed subsequently in respect of the very same property behind the back, the conduct cannot be appreciated as bonafide in any manner what so ever. The recitals in Exts. A1 and A2 give inference of valid sales, nothing else and no materials on records suggest a version that they were created in lieu of any monetary transaction, the quantum thereof too falling short of the amount allegedly borrowed. I am quite certain that such a contention has been put forth solely to get over the situation. In the objections to I.A.2906/18 and in the statements of objections to the instant application, the second defendant would

contend that she is the exclusive owner of the property and she has the privilege to transfer the same. Of course, the validity of Exts.A1 and A2 transfers is quite a different thing. However, a clear case of willful disobedience of the order dated 04-07-19 is established by the materials on record. The contention that the second defendant did not have knowledge of the interim order, I reject the same with the contempt it deserves. The question as to whether the plaintiffs have any right over the plaint schedule property, or whether the suit lacks bonafides, etc are matters of evidence, which is yet to be adduced. The challenge as to the correctness of the order dated 04-07-19 too is not germane for consideration now. Every order of the court is liable to be respected and any attempt to violate it has to be dealt with seriously so as to uphold the rule of law. In the circumstance, I find that no leniency can be shown and the second defendant ought to be proceeded in terms of order 39 Rule 2 A C.P.C.

15. **Point no. 3**

1. The application is allowed and the second defendant is ordered to be detained in civil prison for 3 months.
2. He is also ordered to pay the costs of the application to the plaintiffs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 26th day of July, 2021.

Sd/-
Praveen Kumar.G,
Munsiff.

Appendix

Exhibits marked on the side of the petitioner:-

- A1 - 30/07/2019 - Attested copy of sale deed No. 1882/I/19 executed by Nirmala Hentry in favour of Rexson George
- A2 - 03/10/2019 - Attested copy of sale deed No. 2349/I/19 executed by Nirmala Hentry in favour of Daisy Roy.
- A3 - 19/11/2018 - Attested copy of sale deed No. 2724/I/18 executed by Prathap in favour of Nirmala Hentry.

Exhibits marked for the Respondent Nil

Id/-
Munsiff.

//True Copy//

MUNSIFF

Copied by : Hareesh. P
Compared by :