

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Smt. Manju P., Additional Munsiff

Monday, the 9th day of November, 2020

(18th Karthika, 1942)

IA.1394/2019 In OS.396/2017.

C.C. Shyamala, W/o. K.O. Mohanan Nambiar,	}	
aged 50 years, no occupation, near Chuzhali	}	Petitioner/
Bhagavathi Temple, near CRC, Kalliasseri amsom,	}	Defendant.
Irinavu desom, P.O. Irinavu-670301.	}	

Vs.

Rajkumar C.C., S/o. Saraswathi Amma,	}	Respondent/
aged 51 years, Engineer, Kannapuram amsom desom,	}	Plaintiff.
Edakkepuram, P.O. Cherukunnu-670301.	}	
	}	

This petition coming on 6th day of November, 2020 for final hearing before me in the presence of Sri. Sajeev P., Advocate for petitioner and of S/Sri. C. Krishnan, Sheena C., Leena C. & Muhammed Fouz K.K., Advocates for respondent and having stood over to this day for consideration, the court passed the following:-

ORDER

This interlocutory application is filed by the petitioner who is the defendant in O.S 396/2017 under Section 10 of C.P.C with a prayer to stay all further proceedings in O.S 396/2017.

2. **Brief of the Interlocutory Application:-** It is averred that the suit is filed by the plaintiff/respondent for permanent prohibitory injunction against the defendant/petitioner herein. It is averred that

the back document of the registered document by which the plaintiff claimed title over the plaint schedule properties was challenged in the suit for partition numbered as O.S 312/2009 before the Hon'ble Additional Subordinate Judge, Thalassery. It is averred that O.S No. 312/2009 is a partition suit for partition of properties along with its larger extent as the plaintiff therein is excluded from the partition deed No. 9/2000 of SRO, Kalliasseri by suppressing the fact that she is legal heir and no property was allotted to her. It is averred that the plaintiff and defendants have got right over the property by virtue of the partition deed, which is under challenge in O.S 312/2009. It is further averred that the Hon'ble Additional Subordinate Judge, Thalassery ordered the partition of the property by accepting the claim put forward by the plaintiff, the person excluded from the partition. It is averred that hence O.S 396/2017 based on the said partition deed, cannot be proceeded with until the final order is passed in the O.S 312/2009 before the Hon'ble Additional Subordinate Judge, Thalassery. Hence it is prayed that all further proceedings in O.S 396/2017 may be stayed by the court till the final disposal of O.S 312/2009.

3. **Brief of the counter statement**:- It is contended that the petition is not maintainable either in law or on facts. It is further contended that no documents are produced by the petitioner to show that the subject matter involved in O.S 396/2017 is the subject matter involved in O.S 312/2009 of the Hon'ble Additional Sub Court, Thalassery. It is also contended that the allegation contained in the affidavit in support of the petition is not sufficient to invoke the

provision of Section 10 of C.P.C. It is contended that O.S 396/2017 is a suit for prohibitory injunction and not for partition. It is contended that if O.S 312/2009 of the Hon'ble Additional Sub Court, Thalassery is for partitioning the property involved in O.S 396/2017, the judgment and decree does not affect O.S 396/2017 and hence O.S 396/2017 is not liable to be stayed under Section 10 of C.P.C and so the petition may be dismissed with costs to the respondents.

4. The sole point to be considered is whether all further proceedings in O.S 396/2017 can be stayed u/s 10 of C.P.C till the final disposal in O.S 312/2009 of Hon'ble Additional Sub Court, Thalassery ?

5. Heard both sides.

6. **The point:-** I perused the application and counter filed. I also perused the memo filed by the learned counsel for the defendant on 23.01.2020 in which it is stated that Jyothi Kumari, sister of the plaintiff has filed A.S No. 59/2019 before Additional District Court-III, Thalassery whereby the plaint schedule property in O.S 396/2017 along with the large extent of property was partitioned. No counter was filed by the respondent herein to the memo filed by the counsel for defendant. It is true that O.S 396/2017 is a suit for injunction and O.S 312/2009 is a suit for partition. The learned counsel for the petitioner herein submitted that documents are filed in I.A 102/2020 and therefore I perused the documents filed along with I.A 102/2020 in O.S 396/2017. On verifying those, it is found that it is not true to contend that the petitioner herein has produced no documents to show that the property involved in O.S 396/2017 is the property involved in O.S

312/2009. It is true that the subject matter involved and the parties in O.S 396/2017 are the same in O.S 312/2009 of Hon'ble Additional Sub Court, Thalassery. It is also decipherable from the memo filed that appeal is preferred by the sister of the plaintiff challenging the judgment passed in O.S 312/2009. Therefore I am of the opinion that since the matter in issue in O.S 396/2017 is directly and substantially in issue in O.S 312/2009 this court should not proceed with O.S 396/2017 until the final disposal of O.S 312/2009 and therefore further proceedings in O.S 396/2017 can be stayed u/s 10 of C.P.C.

7. In the result, all further proceedings in O.S 396/2017 is stayed till the final disposal of O.S 312/2009 of Hon'ble Additional Sub Court, Thalassery.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in virtual sitting through google meet on this the 9th day of November, 2020)

ADDITIONAL MUNSIFF.

mmh/-

Copy of Order in
IA.1394/2019 IN
OS.396/2017.

Dated.09/11/2020.

