

IN THE COURT OF THE MUNSIFF-MAGISTRATE OF PONNANI
Present:- Smt. Sowmya T.M., Munsiff- Magistrate, Ponnani.

Monday, the 15th day of January, 2024
the 25th day of Pousha, 1945

INTERLOCUTORY APPLICATION No.2/2023 IN
ORIGINAL SUIT No.214 OF 2023

Between:-

Jameela, 62 years,
W/o.Thaivalappil Aboobackar,
Ezhuvathiruthy Village,
Ponnani Nagaram Amsom, Ponnani Taluk,
Malappuram District.

: Petitioner/
Plaintiff

And:-

1. Jithin Mohan, 28 years, S/o.Mohanan,
2. Sheena, 45 years, W/o.Mohanan,

Defendants are residing at Menakath House,
Ezhuvathiruthy Village, Erikkamanna Desom,
Ponnani Taluk.

: Respondents/
Defendants

This petition coming on this day for final hearing before me in the presence of Sri.M.P.Subramayan, Advocate for the petitioner and of Sri.P.K.Khaleemudheen and of Sri.K.Vijayan and of Smt.Majida.A.M, Advocates for the respondents and this Court passed the following:-

ORDER

The plaintiff in the above suit filed the above petition under Order 39 Rule 1 of the Code of Civil Procedure, 1908. The defendants are shown as the respondents herein.

2. **The petition averments, in brief, are as follows:-** The petition schedule shop room belongs to the petitioner. It was leased out one Mohanan to conduct an establishment in the name and style of "*SIGMA Cut and Piece*

Munsiff Magistrate

Centre". After the demise of Mohanan, the first and the second respondents who were the son and the wife respectively of Mohanan continued tenancy under the petitioner. While so, the respondents gave a share in the aforesaid business to the third defendant in the suit. As per the request of the respondents, the petitioner entered into a rent agreement with the second respondent and the third defendant as the respondents informed that the third defendant was the partner of the respondents and that the first respondent had relinquished his rights over the firm and the first respondent would only be an employee of the newly constituted firm. Subsequently, the first respondent was arrested by the police and he was remanded to judicial custody. The second respondent approached the petitioner and informed him that she wanted to vacate the petition schedule property as she did not want to continue with the business therein and she handed over a stamp paper in which she had written about the surrendering of the petition schedule shop room. Thereafter, the third defendant approached the petitioner for the petition schedule shop room for continuing the business therein after dissolving the partnership. Accordingly, the petitioner rented out the petition schedule shop room to the third respondent as per a rent agreement dated 12/10/2023. On 1/11/2023, the respondents are trying to trespass into the petition schedule shop room and commit waste therein. When the petitioner went to enquire about the same with the third defendant, he saw an altercation between the third defendant and the respondents, and the respondents destroyed the board and other materials in the petition schedule shop room. As the acts of the respondents caused

hindrances to the business of his other tenants, the petitioner tried to intervene in the issue. The respondents threatened the petitioner saying that they are the tenants of the petitioner and that if a rent agreement is not executed in the names of the respondents, they will not allow the petitioner to live peacefully. There is no landlord-tenant relationship between the petitioner and the respondent. Therefore, the respondents may be restrained from trespassing into the petition schedule property and committing any waste therein.

3. The respondents appeared and filed a joint counter statement contending as follows. Mohanan, the father of the first respondent was the tenant of the petitioner. the second respondent was the wife of Mohanan. After the demise of Mohanan, the respondents continued their tenancy under the petitioner. The first respondent got acquainted with the third defendant through their common friend, Shamsi. The first respondent had conducted business with the third defendant during the COVID-19 period. The third defendant told the first petitioner about various businesses and he came to the petition schedule shop room with some of his friends. The third defendant received money from the aforesaid people promising a job. Subsequently, aforesaid persons came to the petition schedule shop room demanding money as the third defendant failed to provide the job offered to them. The first respondent stood as a mediator in various cases being a friend of the third defendant. So, the first respondent often requested time from the above-said persons for repaying the amount for and on behalf of the third defendant to them. In some cases, the first respondent assured

them saying that the amount would be paid by the first respondent. One of those persons namely Vishnu gave a complaint against the first respondent. Consequently, the first respondent was arrested by Ponnani Police and he was remanded to judicial custody. The second respondent gave some blank documents to the third defendant to release the first respondent on bail. The third defendant colluding with the petitioner misutilized one of those stamp papers and fabricated a false document. The respondents have not surrendered the vacant possession of the petition schedule shop room. The respondents have not committed any waste in the petition schedule shop room. Hence, the above petition is liable to be dismissed with the costs of the respondents.

4. The following points arise for determination:

1. Whether the petitioner has made out a prima facie arguable case in support of the claim for interim injunction?
2. In whose favour the balance of convenience does exist?
3. Whether the petitioner will be put to irreparable loss and injury if an order of injunction is not passed?
4. Whether the petitioner is entitled to get an interim injunction as prayed for?
5. What is the order as to cost?

5. Heard both sides.

6. **Points No 1 to 3:-** These points can be considered together for the sake of convenience and brevity. The case of the petitioner is that the petition schedule shop room belongs to the petitioner and that the respondents were the earlier tenants of the petitioner and that the petitioner rented out the petition schedule shop room to the third defendant as the respondents surrendered the petition schedule shop room to the petitioner. the petitioner alleged that the respondents tried to trespass into the petition schedule property claiming that they were the original tenants in the petition schedule shop room.

7. The respondents, on the other hand, contended that they did not surrender the vacant possession of the petition schedule shop room. The first respondent was arrested by the police in a false case. The third defendant had procured blank signed stamp papers and papers from the second respondent saying that the said documents were necessary to release the first respondent on bail. The petitioner and the third defendant colluding with each other misutilized the documents of the second respondent and fabricated false documents. The petitioner has not approached the court with clean hands. If the petition is allowed, the only means of livelihood of the respondents will be shut down. Hence the petition is liable to be dismissed.

8. The petitioner has produced a rent agreement between the petitioner, and the third defendant. The petitioner has produced another document that would show that the second respondent had surrendered possession of the

petition schedule property. The advocate commissioner inspected the petition schedule property twice and the advocate commissioner submitted 2 commission reports before the court. As per the second report, most of the things in the petition schedule shop room were missing when he inspected the shop room for the second time. The respondents alleged that the petitioner and the third defendant took away the movable properties that belonged to the respondents to substantiate their contention that the respondents had surrendered the petition schedule property.

9. The petitioner alleged that the respondents threatened the petitioner saying that they would not allow the petitioner to live peacefully if the petitioner did not execute a rent agreement in their favour. So, the respondents are to be restrained from entering into the petition schedule property. The petitioner has a specific case that the petitioner had entrusted the possession of the petition schedule property to the third defendant. It is pertinent to note that the petitioner has not arrayed the third defendant as the respondent in the above injunction application. The third defendant appeared before the court and filed vakalath on 7/12/2023. The third defendant has not raised any kind of interference made by the respondents in the petition schedule shop room in the above case. Apart from that, the rent agreement produced by the petitioner would show that the petitioner had entrusted the petition schedule shop room to the third defendant on 12/10/2023. The petitioner has admitted that the respondents were the earlier tenants of the petitioner. The only document produced by the petitioner is the

surrendering letter executed by the second respondent. As per the said document, the second respondent surrendered the vacant possession of the petition schedule shop room on 4/6/2023. It is relevant to note that the date of the stamp paper was dated 20/07/2023. So, it cannot be believed that there was a termination of earlier tenancy on due process of law. The court cannot legalize the illegal acts done by the petitioner. Indeed, the termination of tenancy is a matter of evidence. However, the materials placed before the court are not sufficient to hold that the second respondent had surrendered the petition schedule shop room to the petitioner after terminating the tenancy. So, this court cannot find out a prima facie case against the respondents. Balance of Convenience and Comparative hardships are also found in favour of the respondents than that of the petitioner.

In light of the discussions in the preceding paragraphs, this court finds that the petitioner is not entitled to an order of injunction in his favour and the ad-interim injunction granted in favour of the petitioner has to be vacated.

In the result,

The ad-interim injunction passed against the respondents is vacated and the petition is dismissed.

(Typed on my personal laptop and pronounced by me on 15th day of January, 2024)

Munsiff Magistrate