

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

OP(C) NO. 695 OF 2019

JUDGMENT DATED 06.12.2018 IN CMA NO.82 OF 2015 ON THE FILES OF THE IIIRD ADDITIONAL DISTRICT JUDGE, KOLLAM FILED AGAINST THE ORDER IN I.A.NO.3153 OF 2014 IN OS NO.158 OF 2014 ON THE FILES OF THE MUNSIFFS COURT, KOTTARAKKARA

PETITIONER/RESPONDENT IN CMA/PETITIONER IN I.A 3153/2014:

NIZARUDEEN,

AGED 59 YEARS

S/O.MUHAMMED MOIDEEN, RESIDING AT ANI COTTAGE,
VALAVUPACHA, CHIRAVOOR, CHITHARA VILLAGE,
KOTTARAKKARA TALUK.

BY ADVS.

M.GOPIKRISHNAN NAMBIAR

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURRYAN THOMAS

SRI.PAULOSE C. ABRAHAM

RESPONDENT/APPELLANT IN CMA/RESPONDENT IN I.A 3153/2014:

ABU FAIZAL

AGED 41 YEARS

S/O.KASIM KUNJU, SECRETARY, THENJIPPALAM
PANCHAYATH, THENJIPPALAM, MALLAPPURAM DISTRICT
(FROM P.K. HOUSE SWAMIMUKKU, PILIPPARA P.O.,
KUMMIL VILLAGE, KOTTARAKKARA TALUK, CORRECT
ADDRESS: ABU FAIZAL, AGED 38 YEARS, S/O.KASIM
KUNJU, RESIDING AT P.K. HOUSE, ANAPPARA,
MANIYANMUKKU, KADAKKAL P.O., KUMMILMURI, KUMMIL
VILLAGE, KOTTARAKKARA TALUK, NOW AT
KANNAMANGALAM GRAMA PANCHAYATH SECRETARY,
ACHANAMBALAM, KANNAMANGALAM,
MALAPPURAM P.O-676 304.

BY ADV.

SRI.MANOJ RAMASWAMY

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
31.07.2024, ALONG WITH CRP.187/2019, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

O.P(C) No.695 of 2019 and
C.R.P.No.187 of 2019

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946

CRP NO. 187 OF 2019

AGAINST THE JUDGMENT DATED 06.12.2018 IN CMA NO.83 OF 2015 ON THE FILES OF THE IIIRD ADDITIONAL DISTRICT JUDGE, KOLLAM FILED AGAINST THE ORDER IN I.A.NO.3031/2024 IN OS NO.158 OF 2014 ON THE FILES OF THE OF MUNSIFFS COURT, KOTTARAKKARA

REVISION PETITIONER/PETITIONER/RESPONDENT IN CMA AND THE PETITIONER IN IA NO.3031/2014

NIZARUDEEN

AGED 59 YEARS

S/O.MUHAMMED MOIDEEN, RESIDING AT ANI COTTAGE,
VALAVUPACHA, CHIRAVOOR, CHITHARA
VILLAGE, KOTTARAKKARA TALUK

BY ADVS.

M.GOPIKRISHNAN NAMBIAR

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURRYAN THOMAS

SRI.PAULOSE C. ABRAHAM

RESPONDENT/APPELLANT IN CMA AND THE PETITIONER IN IA 3031/2014:

ABU FAIZAL

AGED 41 YEARS

S/O. KASIM KUNUU, SECRETARY, THENJIPPALAM
PANCHAYATH, THENJIPALAM , MALLAPPURAM DISTRICT
(FROM P.K. HOUSE, SWAMIMUKU, PULIPPARA P.O.,
KUMMIL VILLAGE , KOTTARAKKARA TALUK,

CORRECT ADDRESS- ABU FAIZAL, AGED 41 YEARS,
S/O.KASIM KUNJU, RESIDING AT P.K. HOUSE,
ANAPPARA, MANIYANMUKKU, KADAKKAL P.O., KUMMIL
MURI, KUMMIL VILLAGE, KOTTARAKKARA TALUK

NOW KANNAMANGALAM GRAMA PANCHAYATH SECRETARY,
ACHANAMBALAM, KANNAMANGALAM,
MALAPPURAM P.O.-676 304

O.P(C) No.695 of 2019 and
C.R.P.No.187 of 2019

BY ADVS.
SRI.MANOJ RAMASWAMY
SMT.SANJANA R.NAIR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 31.07.2024, ALONG WITH OP(C).695/2019, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

O.P(C) No.695 of 2019 and C.R.P.No.187 of 2019

Dated this the 31st day of July, 2024

J U D G M E N T / O R D E R

The plaintiff in O.S.No.321 of 2012 on the files of the Subordinate Judge's Court, Kottarakara has filed these petitions. In O.P.No.695 of 2019 the petitioner challenges the judgment in CMA 82 of 2015 and in C.R.P No.187 of 2019 he challenges the judgment in C.M.A.No.83 of 2015, both of the IIIrd Additional District Judge, Kollam. The appellate court allowed both those appeals as per a common judgment dated 06.12.2018.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner filed O.S.No.321 of 2012 seeking a decree of permanent prohibitory injunction. Along with the suit, the petitioner filed an interlocutory application seeking temporary injunction restraining the respondent from trespassing into the plaint scheduled property. An order of

injunction was granted on 15.12.2012. Alleging that the respondent, in violation of the said order of injunction, trespassed into and reduced the plaint scheduled property into his possession the petitioner filed IA Nos.3031 of 2014 and 3153 of 2014. He sought to prosecute the respondent as provided in Order XXXIX Rule 2A of the Code and also to order status quo ante by allowing the petitioner to repossess the plaint schedule property. The learned Sub Judge allowed both those petitions as per the order dated 20.08.2014. The respondent preferred CMAs No.82 of 2015 and 83 of 2015 challenging the said orders. As stated, the appellate court set aside both those orders.

4. The controversy involved in the suit is essentially regarding title to the plaint schedule property. Sale deed was executed in favour of the petitioner conveying the plaint scheduled property to him by the respondent. The contention of the respondent is that the sale deed was executed for securing a loan and possession of the plaint schedule property was not parted with. The said dispute has to be resolved in the suit.

5. When the trial court and the appellate court took divergent views in regard to the pertinent question as to who was in possession of the plaint scheduled property on the date of institution of the suit, it is just and appropriate in the interest of justice to decide that question in the suit after trial. Hence I am of the view that without deciding the matters involved in this original petition and revision petition the trial court can be directed to try the suit and decide it in accordance with law in an expeditious manner. That will help to have a final resolution to the dispute between the parties and avoid further delay. The suit was filed in the year 2012. Any further delay in deciding the suit is detrimental to both parties. While refraining from interfering with the impugned judgments, it is made clear that the trial court shall decide the suit on the basis of the evidence let in by both parties and no way trammled by the observations or findings by the trial court in I.A.Nos.3031 of 2014 and 3153 of 2014 or that of the appellate court in CMA Nos.82 of 2015 and 83 of 2015.

These original petition and civil revision petition are disposed of accordingly. The trial court shall dispose of OS

O.P(C) No.695 of 2019 and
C.R.P.No.187 of 2019

No.158 of 2014, keeping in mind the observations made above, as expeditiously as possible, at any rate within a period of six months from the date of receipt of a copy of this judgment.

Sd/-

P.G. AJITHKUMAR
JUDGE

PV

APPENDIX OF OP(C) 695/2019

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE PLAINT DATED 13.12.2012 FILED BY THE PETITIONER AS OS 321/2012 BEFORE THE COURT OF THE MUNSIFF'S KOTTARAKKARA WHICH WAS LATER RENUMBERED AS OS 158/2014.
- EXHIBIT P2 A TRUE COPY OF IA NO.1834/2012 IN OS 321/2012 DATED 4.1.2013 RE-NUMBERED AS I.A.NO.3031/2014 FILED BY THE PETITIONER BEFORE THE SUB COURT, KOTTARAKARA WHICH WAS LATER RENUMBERED AS OS 158/2014.
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 15.12.2012 IN I.A.NO.1834/2012 IN OS NO.321/2012 PASSED BY THE SUBORDINATE JUDGE, KOTTARAKKARA.
- EXHIBIT P4 A TRUE COPY OF THE WRITTEN STATEMENT DATED 14.3.2013 FILED BY THE DEFENDANT IN OS NO.321/2012 BEFORE THE SUBORDINATE JUDGE, KOTTARAKKARA.
- EXHIBIT P5 A TRUE COPY OF I.A.NO.227/2013 RE-NUMBERED AS I.A.NO.3153/2014 DATED 7.1.2013 IN OS NO.158/2014 FILED BY THE PETITIONER BEFORE THE SUB COURT, KOTARAKKARA.
- EXHIBIT P6 A TRUE COPY OF THE COUNTER AFFIDAVIT DATED 14.3.2013 IN I.A.NO.277/2012 (RE-NUMBERED AS IA 3153/2014) IN OS NO.321/2012 BEFORE THE SUBORDINATE JUDGE, KOTTARAKKARA.
- EXHIBIT P7 A TRUE COPY OF THE REPORT DATED 17.12.2012 IN OS NO.321/2012, SUBMITTED BY THE ADVOCATE COMMISSIONER BEFORE THE SUB COURT, KOTTARAKKARA.
- EXHIBIT P8 A TRUE COPY OF THE REPORT DATED 15.1.2013 IN OS 321/2012 SUBMITTED BY THE ADVOCATE COMMISSIONER BEFORE THE SUB COURT, KOTTARAKKARA.

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- EXHIBIT P9** THE TRUE COPY OF THE DEPOSITION OF CW1 DATED MARCH, 2013 IN O.S.NO.321/2012 BEFORE THE SUB COURT.
- EXHIBIT P10** A TRUE COPY OF THE COMMON ORDER DATED 20.8.2014, IN IA NOS. 3031/2014 AND 3153/2014 IN O.S.NO.158/2014 ON THE FILE OF THE COURT OF THE MUNSIFF, KOTTARAKKARA.
- EXHIBIT P11** A TRUE COPY OF THE JUDGMENT DATED 6.12.2018 IN CMA NOS.82&83/2015, OF THE DISTRICT COURT, KOLLAM.
- Exhibit P12** TRUE COPY OF THE FIR NO. 26 OF THE YEAR 2013 OF THE KADAKKAL POLICE STATION DATED 05.01.2013 (MARKED AS EXHIBIT-A13 IN THE COURT BELOW).
- Exhibit P13** TRUE COPY OF THE DEPOSITION OF THE PLAINTIFF AS PW1 BEFORE THE MUNSIFF COURT, KOTTARAKKARA, IN O.S. NO. 158/2014, DATED 04.03.2012 (OS 321/2012 OF MUNSIFF COURT, KOTTARAKKA LATER RENUMBERED AS OS NO. 158/2014 OF SUB COURT KOTTARAKKARA).
- Exhibit P14** TRUE COPY OF THE DEPOSITION OF RAJENDRAN AS PW2 BEFORE THE MUNSIFF COURT, KOTTARAKKARA, IN O.S. NO. 158/2014, (DATED NIL) (OS 321/2012 OF MUNSIFF COURT, KOTTARAKKA LATER RENUMBERED AS OS NO. 158/2014 OF SUB COURT KOTTARAKKARA).
- Exhibit P15** TRUE COPY OF THE DEPOSITION OF SHIHAB KHAN AS PW3 BEFORE THE MUNSIFF COURT, KOTTARAKKARA, IN O.S. NO. 158/2014, (DATED NIL) (OS 321/2012 OF MUNSIFF COURT, KOTTARAKKA LATER RENUMBERED AS OS NO. 158/2014 OF SUB COURT KOTTARAKKARA).
- Exhibit P16** TRUE COPY OF THE SECRETARY'S DIARY OF THE THENHIPALAM GRAMA PANCHAYAT, DATED 31.01.2013 (MARKED AS EXHIBIT-B1 IN O.S NO. 321/2012 OF SUB COURT, KOTTARAKKARA).

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- Exhibit P17** TRUE COPY OF THE DECISIONS TAKEN IN THE THENHIPALAM GRAMA PANCHAYAT MEETING DATED 03.01.2013 (MARKED AS EXHIBIT-B2 IN O.S NO. 321/2012 OF SUB COURT, KOTTARAKKARA) .
- Exhibit P18** TRUE COPY OF THE ACCOUNTS OF THE THENHIPALAM GRAMA PANCHAYAT DATED 02.01.2013 (MARKED AS EXHIBIT-B3 IN O.S NO. 321/2012 OF SUB COURT, KOTTARAKKARA) .
- Exhibit P19** TRUE COPY OF THE EXTRACT OF THE MOVEMENT REGISTER OF THE THENHIPALAM GRAMA PANCHAYAT FOR THE MONTH OF JANUARY, 2013 (MARKED AS EXHIBIT-B4 IN O.S NO. 321/2012 OF SUB COURT, KOTTARAKKARA)