

**Tiny @ Antony Vs. Jacky**

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**SooperKanoon Citation :** [sooperkanoon.com/1010509](http://sooperkanoon.com/1010509)

**Court :** Kerala

**Decided On :** Jan-15-2013

**Judge :** Honourable Mr.Justice S.S.Satheesachandran

**Appellant :** Tiny @ Antony

**Respondent :** Jacky

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN TUESDAY, THE 15TH DAY OF JANUARY 2013 25TH POUSHA 193 OP(C).No. 3064 of 2011 (O) ----- AGAINST THE ORDER IN OS.2180/2010 DATED 07 09.2011 PETITIONER : - ----- TINY @ ANTONY, S/o. A.F. THOMAS, AKKARAPATTI HOUSE, THRISSUR VILLAGE, DESOM, THRISSUR DISTRICT. BY ADV. SRI.K.B.GANGESH RESPONDENT : - ----- JACKY, S/o. THOTTUKARA PUTHENVEETIL THANKA, MADAKKATHARA VILLAGE, DESOM, THRISSUR TALUK, THRISSUR DISTRICT, PIN-680 651. BY ADV. SMT.R.PADMAKUMARI THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 15-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 3064 of 2011 (O) APPENDIX PETITIONER'S EXHIBITS : Ext.P1 : TRUE COPY OF THE PLAINT IN O.S. NO. 2180/2010 IN THE COURT OF MUNSIFF THRISSUR. Ext.P2 : TRUE COPY OF THE I.A. NO.8279/2011 IN O.S. NO. 2180/2010 IN THE COURT OF MUNSIFF THRISSUR. Ext.P3 : TRUE COPY OF THE COUNTER FILED BY THE RESPONDENT IN Ext.P2 PETITION DATED

5 9.2011. Ext.P4 : TRUE COPY OF THE ORDER DATED 07 09.2011 IN I.A. NO. 8279/2011 IN O.S. NO. 2180/2010. RESPONDENT'S EXHIBITS : NIL. // TRUE COPY // P.A. TO JUDGE DMR/- S.S.SATHEESACHANDRAN,J.

----- O.P. (c) NO. 3064 of 2011  
----- Dated this the 15th day of January, 2013  
JUDGMENT Petitioner is the second plaintiff in a suit for injunction. Plaintiffs claimed that they are the tenants in occupation of the plaint schedule building and attempts are made by defendant to forcibly evict them from such building. An order of interim injunction applied by the plaintiffs to restrain the defendant from forcibly evicting them from the building was granted by the court below. After inclusion of the suit for trial in the list, an application was moved by plaintiffs for amendment of the plaint setting forth a case that pending suit the defendant trespassed upon the property and caused damage to the machineries installed there. A wall of the building was also damaged by the defendant was their further case. In view of the subsequent events plaintiffs wanted to amend the suit for a decree of mandatory injunction and for damages for the loss sustained allegedly on O.P. (c) NO. 3064 o

2. account of the mischief done by the defendant. Learned Munsiff taking note that an application moved by the plaintiffs under Order XXXIX Rule 2-A of the Code of Civil Procedure alleging violation of the interim order of injunction passed is pending consideration held that the decree of mandatory injunction by amendment is not called for as the court can pass appropriate orders in case violation of its order is proved in the case. So far as the claim for damages canvassed by the plaintiffs it was held that plaintiffs can canvass the claim arising on the subsequent cause of action by instituting a fresh suit. Permission was also accorded to the plaintiffs to institute a separate suit to canvass their claim for compensation. Amendment application was disallowed. Ext.P4 is that order. Challenge in the original petition is against that order invoking the visitorial jurisdiction of this court under Article 227 of the Constitution of India.

2. I heard the counsel on both sides. Learned counsel for the respondent/defendant has no serious objection in allowing the amendment application applied for by the plaintiffs. Concession made by the O.P. (c) NO. 3064

3. respondent/defendant with respect to the application for amendment moved by the plaintiffs cannot be given much merit. Suit is one for injunction simplicitor alleging that there is threat of forcible eviction at the instance of the defendant. The suit has come up in the list after filing of an application alleging violation of the interim order of injunction on an application moved under Order XXXIX Rule 2-A of the Code of Civil Procedure. The application for amendment moved by the plaintiffs at that stage was belated. Going through the order passed by the learned Munsiff it is seen no prejudice or injury has been caused by dismissal of the amendment application since whatever rights of the plaintiffs even over the subsequent cause of action alleged are adequately taken note of by the learned Munsiff in passing appropriate orders/directions to protect such rights. I do not find any merit in the challenge raised against Ext.P4 order, and the petition is dismissed. S.S.SATHEESACHANDRAN JUDGE. DMR/-

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