

Hassainar Vs. K.S.E.B.

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Court : Kerala

Decided On : Feb-04-2013

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Hassainar

Respondent : K.S.E.B.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 WP(C).No. 696 of 2013 (J)
----- PETITIONER(S): ----- PARAYIL HASSAINAR, S/O.MOHAMMED HAJI PARUTHUR AMSOM, PAZHAYANGADI DESOM POST PARUTHUR, PALAKKAD DISTRICT. BY ADVS.SRI.SAJU.S.A SRI.T.SIVADASAN SRI.K.C.KIRAN SMT.P.A.SHEEJA SMT.MEENA.A.
RESPONDENT(S): ----- 1. KERALA STATE ELECTRICITY BOARD REPRESENTED BY ITS SECRETARY VYDYUTHI BHAVAN THIRUVANANTHAPURAM,PIN

001. 2. ASSISTANT EXECUTIVE ENGINEER THRITHALA SUB DIVISION,K.S.E.B. POST THRITHALA, PALAKKAD DISTRICT.

3. ASSISTANT ENGINEER K.S.E.B., ELECTRICAL DIVISION POST THRITHALA PALAKKAD DISTRICT

534.

4. PALASSERY ITHIKKAL AHAMMED HAJI S/O.AHAMMEDKUTTY,VALAKULAM
AMSOM DESOM POST VALAKULAM, MALAPPURAM DISTRICT

508.

5. CHERIYA AHAMMEDKUTTY HAJI S/O.PALASSERY ITHIKKAL AHAMMED
HAJI P.O.VALAKULAM MALAPPURAM DISTRICT

508. 6. JAFFAR S/O. CHERIYA AHAMMEDKUTTY HAJI PALASSERY ITHIKKAL,
VALAKULAM AMSOM DESOM POST VALAKULAM, MALAPPURAM DISTRICT

508. R4,6 BY ADV. SRI.K.RAMAKUMAR (SR.) R4,R 6 BY ADV.
SRI.S.M.PRASANTH R4,R 6 BY ADV. SMT.SMITHA GEORGE R1-R3 BY ADV.
SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB R ADDL.7 BY ADV.
SRI.C.P.MOHAMMED NIAS R BY SRI.JAICE JACOB,SC,KERALA STATE
ELECTRICITY BOARD THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 04-02-2013, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: APPENDIX IN W.P.(C) NO.696 OF 201.PETITIONER'S
EXTS: EXHIBIT-P1- THE TRUE COPY OF THE PLAINT IN O.S.NO.459/2011 ON
THE FILE OF SUB COURT, OTTAPALAM, DATED 22 12-2011. EXHIBIT-P2 -
THE TRUE COPY OF THE WRITTEN STATEMENT FILED BY RESPONDENTS
4 AND 5 IN O.S.NO.459/2011, SUB COURT, OTTAPALAM, DATED 20 5-2012.
EXHIBIT-P3 - THE TRUE COPY OF I.A.4433/2011 IN O.S.NO.459/11, SUB
COURT, OTTAPALAM, DATED 22 12-2011 ALONG WITH THE ORDERS
PASSED THEREON EXHIBIT-P4 - TRUE COPY OF THE REPORT OF THE
COMMISSIONER SUBMITTED IN O.S.NO.459/2011, SUB COURT,
OTTAPALAM, DATED 20 1-2012 EXHIBIT-P5 - THE TRUE COPY OF THE RENT
CONTROL PETITION 6 201 ON THE FILE OF RENT CONTROL COURT,
PATTAMBI DATED 11 6-2012 EXHIBIT-P6 - TRUE COPY OF THE BILL ISSUED
TO THE PETITIONER DATED 5 10- 2012. RESPONDENT'S EXTS: EXT.R4(a)
TRUE COPY OF THE SALE DEED DATED 19 11.2010 EXT.R4(b) TRUE COPY
OF THE SALE DEED DATED 27 01.2011 EXT.R4(c) TRUE COPY OF
ELECTRICITY BILL DATED 5 1.2013 ISSUED IN THE NAME OF MR.KUNJU

MOHAMMED. ANNEXURE R2(c) TRUE COPY OF THE REQUEST SUBMITTED BY SRI.KUNJUMOHAMMED REQUESTING TO DISCONNECT THE SUPPLY DATED 4 1.2013 EXT.R7(a) TRUE COPY OF DOCUMENT NO.6094/12 EXECUTED IN FAVOUR OF ADDL. 7TH RESPONDENT. EXT.R7(b) TRUE COPY OF THE SALE AGREEMENT DATED 9 11/2012 EXECUTED BY PETITIONER IN FAVOUR OF ADDITIONAL 7 H RESPONDENT. EXT.R7(c) TRUE COPY OF THE BILL ISSUED TO THE ADDITIONAL 7 H RESPONDENT DATED 5 1.2013 EXT.R7(d) TRUE COPY OF THE BASIC TAX RECEIPT DATED 12 11.2012 ISSUED BY PARUTHUR VILLAGE OFFICE. EXT.R7(e) TRUE COPY OF THE POSSESSION CERTIFICATE DATED 20 11/2012 ISSUED BY THE VILLAGE OFFICER, PARUTHUR VILLAGE TO THE ADDITIONAL 7 H RESPONDENT. W.P.(C) No.696/2013 :

2. : EXT.R7(f) TRUE COPY OF THE RESIDENTIAL/OWNERSHIP CERTIFICATE DATED 19 11.2012 ISSUED BY PARUTHUR GRAMA PANCHAYAT TO THE ADDL. 7TH RESPONDENT IN RESPECT OF BUILDING BEARING NO. V/621 EXT.R7(g) TRUE COPY OF RECEIPT ISSUED BY PARUTHUR GRAMA PANCHAYAT TO ADDITIONAL 7 H RESPONDENT ACKNOWLEDGING RECEIPT OF PROPERTY TAX. EXT.R7(h) TRUE COPY OF THE NOTICE ISSUED BY PARUTHUR GRAMA PANCHAYAT TO THE PETITIONER. EXT.R7(i) TRUE COPY OF THE AFFIDAVIT AND PETITION SEEKING IMPLEADMENT IN O.S.NO.459/2012 PENDING BEFORE THE HON'BLE SUB COURT, OTTAPPALAM. //TRUE COPY// P.S. TO JUDGE. V.CHITAMBARESH, J.

----- W.P.(C) No. 696 of 2013 ----- Dated
this the 4th day of February, 2013

JUDGMENT

The petitioner is the plaintiff in O.S.No.459/2011 on the file of the court of the Subordinate Judge of Ottappalam filed for a decree of declaration and consequential injunction. The petitioner has sought a declaration that the documents relied on by defendants 1 and 2 therein (respondents 4 and 5 herein) are nominal and sham and for a consequential injunction restraining them from

creating sale deeds or encumbering the property. The property in dispute in the suit is 18 cents of land comprising of a residential portion and a saw mill in R.S.No.335/7 of Paruthur Amsom in Ottappalam Taluk. The Court of the Subordinate Judge by Ext.P3 order in I.A.No.4433/2011 dated 22.12.2011 has restrained respondents 4 and 5 from forcibly evicting the petitioner from the house situated in the plaint schedule property. It is seen therefrom that the order of injunction was passed after respondents 4 and 5 entered appearance and the application for injunction now stands adjourned with the suit. The sixth respondent in this writ W.P.(C) No.696 o

2. petition is the son and power-of-attorney holder of the fifth respondent who is reportedly abroad.

2. Respondents 4 and 5 have in turn sought eviction of the petitioner describing him to be a tenant under Sections 11 (2) (b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. Ext.P5 is the copy of the Rent Control Petition in R.C.P.No.6 of 2012 on the file of the court of the Rent Controller of Pattambi which is still pending. The additional seventh respondent is a person who has claimed to have purchased the property pendente lite under Ext.R7(a) sale deed dated 5.11.2012. The additional seventh respondent also relies on Ext.R7(b) deed dated 9.11.2012 wherein the petitioner is said to have surrendered possession of the property to him. The additional seventh respondent has filed Ext.R7(i) application under Order XXII Rule 10 of the Code of Civil Procedure to get himself impleaded in the suit as an additional defendant. The petitioner alertly points out that there is no whisper in the application for impleading about Ext.R7(b) deed whereunder the petitioner is said to have parted possession of the property. It is W.P.(C) No.696 o

3. the case of the petitioner that Ext.R7(b) deed is fabricated and that no possession was handed over to the additional seventh respondent as alleged. The petitioner asserts that additional seventh respondent is a rival mill owner who in collusion with respondents 5 and 6 is attempting to smoke out the petitioner from the premises.

3. It is not disputed that the petitioner has enjoyed electricity connection with Consumer No.22214-O under the jurisdiction of the second respondent as evidenced by Ext.P6 bill. It appears that the additional seventh respondent on the basis of the alleged sale deed and deed [Exts.R7(a) and R7(b)] obtained electricity connection in his name also with Consumer No.22214- O. This is evident by Ext.R7(c) bill issued in the name of the additional seventh respondent. What is surprising is the fact that the additional seventh respondent soon after filed Ext.R2(a) request to the second respondent seeking to dismantle the electricity connection. The additional seventh respondent has ofcourse his own story that he wants to dismantle the entire building and can snap the electricity connection by recourse to W.P.(C) No.696 o

4. Regulation 38 of the KSEB Terms and Conditions of Supply, 2005. The electricity connection has consequently been snapped and the property is plunged in darkness despite Ext.P3 order of injunction in I.A.No.4433/2011.

4. I do not want to go into the disputed questions of fact raised by either parties as the matter is pending before two forums - the Civil Court and the Rent Control Court. But I do feel that the property has to be preserved atleast till the application for injunction is heard and disposed of on merits by the court of the Subordinate Judge. The petitioner laments that he finds it difficult to reside and at the same time honour the commitments to various consumers in respect of the supply of the sized timber from the mill. The additional seventh respondent however contends that the licence issued by the Panchayat has already expired and is not current.

5. I direct the court of the Subordinate Judge of Ottappalam to dispose of I.A.No.4433/2007 in O.S.No.459/2011 within a period of two weeks from the date of receipt of a copy of this judgment. The court below while considering the W.P.(C) No.696 o

5. application for injunction shall decide as to whether the electricity connection has to be restored to the whole of the premises in the name of the petitioner. It will be desirable to energise the premises in the name of the petitioner or in the name of the additional 7th respondent in order to preserve the property pending suit. I hasten to add that I have not pronounced anything on the merits of the case with

regard to the entitlement of the petitioner to run the saw mill. The Writ Petition is disposed of as above. V.CHITAMBARESH, Judge. nj.

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