

O.M.Johnson Vs. Thomas

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Court : Kerala

Decided On : Oct-25-2013

Judge : Honourable Mr.Justice P.N.Ravindran

Appellant : O.M.Johnson

Respondent : Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN FRIDAY, THE 25^H DAY OF OCTOBER 2013 3RD KARTHIKA, 1935 OP(C).No. 1742 of 2013 (O) ----- PETITIONER(S): ----- O.M.JOHNSON S/O.MANUAL, RESIDING AT OLIKKAL HOUSE, KONNATHADY KARA KONNATHADY VILLAGE BY ADVS.SRI.P.B.KRISHNAN SMT.GEETHA P.MENON SRI.N.AJITH SRI.P.M.NEELAKANDAN SRI.P.B.SUBRAMANYAN RESPONDENT(S): ----- 1. THOMAS S/O.P.C KURIAN, PAZHAYAMADATHIL HOUSE CHELLARCOIL KARA, ANAKKARA VILLAGE UDUMBANCHOLA TALUK PIN685509 2. JAMES S/O.CHERIYAN, RESIDING AT KIZHAKKETHALACKAL HOUSE, KANCHIYAR KARA, AYYAPPANCOIL VILLAGE, UDUMBANCHOLA TALUK, PIN685511 3. ROY S/O.CHERIYAN, RESIDING AT KIZHAKKETHALACKAL HOUSE, KANCHIYAR KARA, AYYAPPANCOIL VILLAGE, UDUMBANCHOLA TALUK, PIN685511 4. REJI S/O.CHERIYAN, RESIDING AT KIZHAKKETHALACKAL HOUSE KANCHIYAR KARA, AYYAPPANCOIL VILLAGE, UDUMBANCHOLA TALUK, PIN685511 5. P.C

JOSEPH PERIKALATHAM KUZHI, CHELLARCOIL P.O, MYLADUMPARA KARA ANAKKARA VILLAGE, UDUMBANCHOLA TALUK PIN685509 R1 BY ADV. SRI.A.SHAFAEEK (KAYAMKULAM) THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON2510-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 1742 of 2013 (O) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P1: DATED1904-2012, TRUE COPY OF THE PLAINT IN O.S NO143OF 2012 ON THE FILE OF MUNSIFF COURT,KATTAPPANA EXT.P2 DATED2505-2012 TRUE COPY OF THE PETITION IA857OF 2012 FILED BY RESPONDENT NO.1 EXT.P3 DATED2807-2012 TRUE COPY OF COUNTER AFFIDAVIT IN O.S NO143OF 2012 MUNSIFF'S COURT, KATTAPPANA EXT.P4 DATED0609-2012 TRUE COPY OF THE

ORDER

IN IA797OF2012 IA856OF 2012 AND I.A857OF 2012 ON THE FILE OF THE MUNSIFF'S COURT OF KATTAPPANA EXT.P5 DATED2009-2012 TRUE COPY OF THE

JUDGMENT

IN O.P(C) NO 3080 OF2012EXT.P6 DATED0910-2012 TRUE COPY OF C.M.A NO39OF 2012 SUB COURT KATTAPPANA EXT.P7 DATED0910-2012 TRUE COPY OF I.A NO 1075 OF2012IN C.M.A NO39OF 2012 SUB COURT, KATTAPPANA EXT.P8 DATED0910-2012 TRUE COPY OF C.M.A NO40OF2012 SUB COURT, KATTAPPANA EXT.P9 DATED211-2012, TRUE COPY OF THE

JUDGMENT

IN O.P (C) NO 3645 OF2012EXT.P10 DATED34-2013 TRUE COPY OF THE

JUDGMENT

IN C.M.A NOS39AND40OF 2012 SUB COURT KATTAPPANA RESPONDENT(S)' EXHIBITS : NIL RKC TRUE COPY PA TO JUDGE. P.N.RAVINDRAN, J.

==--==--==--==--==--==--== O.P.(C)No.1742 of 2013 ==--==--==--==--==--==--==

Dated this the 25th day of October, 2013

JUDGMENT

The petitioner is the additional fifth defendant in O.S.No.143 of 2012 on the file of the Court of the Munsiff of Kattappana. The first respondent is the plaintiff and respondents 2 to 5 are defendants 1 to 4 respectively therein. The brief facts of the case are as follows:- 2. The first respondent herein as plaintiff instituted O.S.No.143 of 2012 on 20.4.2012 in the vacation court, joining respondents 2 to 5 herein as the defendants. Ext.P1 is a copy of the plaint in O.S.No.143 of 2012 above referred to. The relief sought in O.S.No.143 of 2012 is for a permanent prohibitory injunction restraining the defendants, their men and agents from trespassing upon the plaint schedule property and from obstructing the plaintiff's peaceful possession thereof and from committing acts of waste or mischief therein. The plaint schedule property is described as a parcel of land, 5.75 acres in extent, situate in R.S.Nos.542/2 and 542/5 of Anakkara Village, Udumbanchola Taluk, Idukki District and the building therein.

3. The case set out by the petitioner in the plaint is that the O.P.(C).No.1742 of 2013 ..2.. plaint schedule property belongs to Sri.George, S/o.Thomas, Manayath House, Chellarkovil Kara, Anakkara Village, Udumbanchola Taluk, that by virtue of a lease agreement executed by him and Sri.George, the owner of the property on 2.2.2007, he came into possession of the plaint schedule property and since then he is residing in the building (VI/242) situate therein with his family. The plaint proceeds to state that on expiry of the lease period of two years, another lease deed was executed on 31.3.2009 for a period of six months on the same terms and conditions, that on 12.12.2009, a third lease deed was executed for a period of eight years and that on the strength of the lease deeds the plaintiff has improved the property, dug a pond and a water tank and cultivated it with cardamom. In paragraph 13 of the plaint it is alleged that while matters stood thus, the respondents (defendants 1 to 4) intervened and defendants 1 to 3 who represented themselves to be relatives of Mr.George, the owner and the fourth defendant, their henchman, demanded him to vacate the plaint schedule property, that the plaintiff informed them that the property is leased out to him by Mr.George and except Mr.George no one else has the right to evict him therefrom, that thereupon the defendants became furious and went back and later, on 17.4.2012, the defendants and their henchmen came to the plaint schedule property and attempted to O.P.(C).No.1742 of 2013 ..3.. destroy the cultivation therein. It is

alleged that they also attempted to forcefully evict the plaintiff and his family but on account of the timely intervention of the plaintiff and his neighbours, it was prevented. It was on these averments that the suit was instituted for the relief aforesaid.

4. Along with the plaint the plaintiff filed I.A.No.310 of 2012 for a temporary injunction restraining the respondents from trespassing into the plaint schedule property and obstructing his peaceful possession of the plaint schedule property. On that application, an ad interim order of injunction was passed restraining the respondents (defendants 1 to 4) from causing obstruction to the plaintiff's peaceful possession of the plaint schedule property until further orders. The plaintiff had along with I.A.No.310 of 2012 filed an application for the appointment of an Advocate Commissioner to inspect the plaint schedule property and to submit a report. On that application Sri.Able C. Kurian, Advocate was appointed as Commissioner and he inspected the plaint schedule property on 21.4.2012 and filed a report dated 3.5.2012 which was later marked as Ext.C1. The plaintiff had in the application for appointment of an Advocate Commissioner requested that the Advocate Commissioner may be directed to ascertain and report whether he is in possession of the plaint schedule property and whether he is residing there with O.P.(C).No.1742 of 2013 ..4.. his family. In his report dated 3.5.2012, the Advocate Commissioner reported that he saw the plaintiff's mother, sister and sister's child in building bearing door No.VI/242 situate almost in the middle of the plaint schedule property. Though the Advocate Commissioner had reported that in the cattle shed situate on the western side of the house, he saw three cows, a calf, two goats and a dog and in the sit out, an insecticide pump and a water pump were found and in the car porch and on the grounds he found fertilizer and organic manure kept in sacks, he did not report about any movables in the house. He also reported that he found four persons in the plaint schedule property who claimed to be employees of the plaintiff.

5. After the Advocate Commissioner filed his report dated 3.5.2012, the plaintiff filed I.A.No.857 of 2012 (Ext.P2) on 25.5.2012 joining defendants 1 to 4 as respondents wherein he sought restoration of the status quo of the plaint schedule property as on the date of the Commissioner's report dated 21.4.2012 and an

order evicting the respondents and their men from the plaint schedule property. In paragraph 1 of the affidavit filed in support of the said application he had averred that he is in possession of the plaint schedule property since 2.2.2007 by virtue of the lease agreement, that he has been residing with his family in the building O.P.(C).No.1742 of 2013 ..5.. situate in the plaint schedule property and doing agricultural operations, that his wife left him with their children due to some misunderstanding and since then he and his mother are residing in the plaint schedule property. In paragraph 2 he averred that the order of injunction which was passed on 21.4.2012 was served on the respondents and is still in force. In paragraph 3 he averred that after the order of injunction was served on the respondents on 21.4.2012, the respondents along with their henchmen trespassed upon the plaint schedule property on 6.5.2012 while he and his mother were away from the plaint schedule property in connection with the marriage of his cousin at Kumily, that he was kicked out from the plaint schedule property and after kicking him out from the plaint schedule property, the respondents allowed their henchmen to remain there. He also averred that goondas of the respondents under the leadership of their nephew Mr.Johnson, S/o.Appachen Olickal is staying in building bearing door No.VI/242 situate in the plaint schedule property and that all his documents, utensils, furniture and wearing apparel are still there in the plaint schedule property. In paragraph 5 he averred that the Advocate Commissioner appointed by the trial court had inspected the plaint schedule property on 21.4.2012 and his possession of the plaint schedule property was found by the Advocate Commissioner on the O.P.(C).No.1742 of 2013 ..6.. date of inspection. He contended that the respondents have no manner of right to remain in the plaint schedule property, that the orders of the court have been violated by the respondents and the persons remaining in the plaint schedule property are authorised by the respondents and are acting upon the commands of the respondents and that the status of the plaint schedule property as on the date of the Commissioner's report is to be preserved.

6. The plaintiff had along with I.A.No.857 of 2013 filed I.A.No.858 of 2012 for the appointment of an Advocate Commissioner to inspect the plaint schedule property and to ascertain whether after the interim order of injunction was passed on 21.4.2012 the respondents and their men have trespassed upon the plaint

schedule property on 6.5.2012 and are residing in the house situate therein. He also wanted the Advocate Commissioner to inspect building bearing door No.VI/242 and to report about the movables and the persons residing therein. He also wanted the Advocate Commissioner to report about various other aspects referred to in the application. The said application was allowed. The trial court did not however deem it appropriate to appoint the Advocate Commissioner who had inspected the plaint schedule property on 21.4.2012, but appointed Sri.Gibi Sebastian, Advocate as the Advocate Commissioner. The Advocate Commissioner thus O.P.(C).No.1742 of 2013 ..7.. appointed inspected the plaint schedule property with notice to the plaintiff and defendants on 4.6.2012 and submitted a report dated 28.6.2012. The said report discloses that the Advocate Commissioner had given notice to Sri.O.M.Johnson (the petitioner herein) who was found in the premises. The Advocate Commissioner has in his report dated 28.6.2012 reported that at the time of inspection Sri.Johnson Oliykkal (the petitioner herein), his wife Laly and family members were residing in building bearing VI/95 (new number VII/201) and that when he made enquiries Sri.Johnson informed him that he is the power of attorney of the owner of the land Sri.George Thomas and Smt.Lomy George and that he is residing in the property and looking after the cultivation therein. The Advocate Commissioner has after inspecting building bearing door No.VI/242 reported that Sri.Johnson and his family members are residing therein and that he saw a double door Samsung Refrigerator, a Whirlpool Washing Machine, an LCD TV, an Induction Cooker, a Music System and a DVD player. The Advocate Commissioner has also reported that though the plaintiff came with a bunch of keys, the keys did not suit the locks and that the lock fixed in the front door was found to be recently installed.

7. After the Advocate Commissioner filed his report dated 28.6.2012, the petitioner herein filed I.A.No.1296 of 2012 on O.P.(C).No.1742 of 2013 ..8.. 21.7.2012 seeking impleadment as additional fifth defendant in the suit. In the affidavit filed in support of the application, he contended that he is in possession and management of the plaint schedule property ever since 15.4.2012, the date on which the plaintiff vacated the plaint schedule property and surrendered the building, that he is residing in the building situate in the plaint schedule property and managing the plaint schedule property and that after instituting the suit, joining persons who

have no connection whatsoever with the property as defendants, the plaintiff has made forcible attempts to enter into the property. On these averments he sought impleadment as additional fifth defendant. In the affidavit filed in support of the application he had also averred that he is residing in the property and managing it on behalf of the original owners. The said application was not opposed either by the plaintiff or by defendants 1 to 4 and it was allowed and the petitioner herein was impleaded as the additional fifth defendant. However, the cause title of the plaint and the various interlocutory applications were not suitably amended. The plaintiff did not also carry out consequential amendments to the plaint or the affidavit filed in support of the interlocutory applications filed by him which were then pending consideration, including I.A.No.856 of 2012 and 857 of 2012. The relief sought in I.A.No.856 of 2012 was for police protection to O.P.(C).No.1742 of 2013 ..9.. enforce the ad-interim order of injunction passed on 21.4.2012 on I.A.No.310 of 2012, which was renumbered as I.A.No.797 of 2012 on the files being transmitted to the trial court by the vacation court. Though the petitioner herein who was impleaded as the additional fifth defendant by order passed on 21.7.2012 was not joined as party to the aforesaid applications and no averments had been made against him in the pleadings, he was also heard when I.A.Nos.797, 856 and 857 of 2012 were taken up for consideration on 9.8.2012. By Ext.P4 order passed on 6.9.2012, the trial court held that the plaintiff has succeeded in establishing his possession over the plaint schedule property. The trial court also held that the additional fifth defendant was impleaded at his own instance after the interim order of injunction was passed and it is not binding on him, that Ext.C2 commission report would show that the fifth defendant was occupying petition schedule property at the time of inspection and that from the materials on record it cannot find any violation of the orders passed by it, by any of the parties and therefore, police protection cannot be granted. In that view of the matter the trial court dismissed I.A.No.856 of 2012. I.A.No.797 of 2012 and 857 of 2012 were allowed and the fifth defendant was directed to vacate the plaint schedule property within 2 weeks. The respondents (defendants 1 to 4) were restrained by an order of temporary O.P.(C).No.1742 of 2013 ..10.. injunction trespassing into the petition schedule property, committing acts of waste or mischief therein and from obstructing the peaceful possession and enjoyment of

the property by the plaintiff. The trial court also directed that in the event of failure on the part of the fifth defendant to vacate the property within the stipulated period, the petitioner will be at liberty to cause him to be evicted through the process of the court.

8. Aggrieved by Ext.P4 order to the extent it directed him to vacate the petition schedule property, the fifth defendant filed O.P. (C) No.3080 of 2012 in this Court. The said original petition was disposed of at the stage of admission by Ext.P5 judgment delivered on 20.9.2012 with the observation that the petitioner should challenge Ext.P4 order passed on I.A.No.857 of 2012 to the extent it directed him to vacate the building in the petition schedule property in the Civil Miscellaneous Appeal being filed against the order allowing the application for temporary injunction and in order to enable him to do so, the operation of Ext.P4 order was kept in abeyance for a period of one month. The petitioner thereupon filed C.M.A.No.39 of 2012 challenging the order passed on I.A.No.857 of 2012 accompanied by I.A.No.1075 of 2012 wherein he prayed for an interim order staying the operation of Ext.P4 order. He also filed C.M.A.No.40 of 2012 challenging the order of injunction passed on O.P.(C).No.1742 of 2013 ..11.. I.A.No.797 of 2012. When the interlocutory application for stay (I.A.No.1075 of 2012 in C.M.A.No.39 of 2012) was not heard and disposed of, he moved this Court by filing O.P.(C) 3645 of 2012. The said original petition was disposed of at the stage of admission by Ext.P9 judgment delivered on 2.11.2012 with a direction to the lower appellate court to dispose of I.A.No.1075 of 2012 within one month from the date of receipt of a copy of the judgment and with the observation until then, the order on I.A.No.857 of 2012 in O.S.No.143 of 2012 (Ext.P4) shall not be enforced. Pursuant thereto, the lower appellate court heard C.M.A.Nos.39 & 40 of 2012 and dismissed the appeals by Ext.P10 judgment delivered on 3.4.2013. The petitioner has aggrieved by Ext.P4 order and Ext.P10 judgment filed this original petition under Article 227 of the Constitution of India.

9. I heard Sri.P.B.Krishnan, learned counsel appearing for the petitioner and Sri.A.Shafeek, learned counsel appearing for the first respondent. As the dispute is mainly between the petitioner on the one hand and the first respondent/plaintiff on the other, learned counsel on both sides submitted that this Court need not

await service of notice on the third respondent before proceeding to decide the original petition on the merits. Sri.P.B.Krishnan, learned counsel appearing for the petitioner contended that the petitioner O.P.(C).No.1742 of 2013 ..12.. herein was not joined as a party to the suit, that he got himself impleaded by order passed on 21.7.2012 on I.A.No.1296 of 2012 on the averment that he is in possession and enjoyment of the plaint schedule property ever since 15.4.2012 on behalf of the original owner, that notwithstanding the said fact the plaint or interlocutory applications which were then pending were not amended either by joining him as a party to the plaint or by introducing appropriate averments to the effect that he has in violation of the order of injunction which was passed on 21.4.2012 trespassed upon the plaint schedule property and dispossessed the plaintiff, that by virtue of the provisions contained in Order 1 rule 10 of the Code of Civil Procedure, the petitioner can be deemed to have been made a party to the suit only on 21.7.2012, that the trial court had even in Ext.P4 order held that he is in possession of the plaint schedule property and that he has not violated the order of injunction and therefore, the trial court erred in allowing I.A.No.797 of 2012 and I.A.No.857 of 2012 and in directing him to vacate the plaint schedule property and restraining him from trespassing into the plaint schedule property or from committing acts of waste therein. Referring to the averments in paragraph 2 of the affidavit filed in support of I.A.No.857 of 2012 (Ext.P2) and Exts.C1 and C2 commission reports, the learned counsel for the petitioner O.P.(C).No.1742 of 2013 ..13.. contended that the case set out by the plaintiff himself in the affidavit filed in support of I.A.No.857 of 2012 is that he was residing in the plaint schedule property along with his family, that his wife left him on 8.8.2012 with his children due to some misunderstanding and since then he and his mother are residing in the plaint schedule property and that in the light of the said averment the statement made by the Advocate Commissioner in Ext.C1 report dated 3.5.2012 that the plaintiff's mother and sister were found residing in building bearing door No.VI/242 cannot be believed. Referring to Ext.C2 report submitted by the Advocate Commissioner on 28.6.2012, the learned counsel for the petitioner contended that the Advocate Commissioner has reported that the additional fifth defendant is residing in building bearing door No.VI/95 (new No.VIII/201) that the presence of the petitioner in the building situate in the plaint schedule property has been accepted

by the trial court as well, and therefore, as the plaintiff has not proved that he was in exclusive possession and enjoyment of the plaint schedule property on the date of institution of suit namely 20.4.2012, the trial court erred in allowing I.A.No.797 of 2012 (originally numbered as I.A.No.310 of 2012) and I.A.No.857 of 2012 and in passing the impugned order. The learned counsel contended that in the absence of any pleading or proof to the effect that the O.P.(C).No.1742 of 2013 ..14.. additional fifth defendant had trespassed upon the plaint schedule property after the ad-interim order of injunction was passed, the trial court erred in directing him to vacate the plaint schedule property and in injuncting him from entering into the plaint schedule property. The learned counsel lastly submitted that the order of injunction which was passed on 21.4.2012 only restrained the respondents in the application (defendants 1 to 4 in the suit) from obstructing the plaintiff's possession of the plaint schedule property, that no order of injunction was passed restraining the defendants from trespassing into the plaint schedule property and therefore, for that reason also the impugned order/judgment cannot be sustained.

10. Per contra Sri.A.Shafeek, the learned counsel appearing for the first respondent/plaintiff contended with reference to Ext.C1 report dated 3.5.2012 that the Advocate Commissioner had found the plaintiff's mother, sister and the sister's daughter in building bearing door No.VI/242 situate in the plaint schedule property, that the said report establishes the fact that the plaintiff was in possession of the plaint schedule property as on the date of the suit, that the Advocate Commissioner who submitted Ext.C1 report did not find the additional fifth defendant or his family members therein and therefore, as the plaintiff has prima facie proved that he was in possession of the plaint schedule property on the date of institution O.P.(C).No.1742 of 2013 ..15.. of the suit, the presence of the additional fifth defendant in the plaint schedule property on the date of inspection by the Advocate Commissioner who submitted Ext.C2 report can only be as alleged by the plaintiff in the affidavit filed in support of the application namely pursuant to the act of trespass committed by him on 6.5.2012. The learned counsel further contended that as the trial court has accepted the plaintiff's case that he was in possession of the plaint schedule property on the date of institution of the suit, no exception can be taken to the impugned order/judgment which was passed to give effect to the interim order of injunction passed by the trial court.

11. I have considered the submissions made at the Bar by learned counsel appearing on either side. I have also gone through the pleadings and the materials on record. It is evident from Ext.P1 plaint in O.S.No.143 of 2012 that the petitioner herein was not joined as a defendant therein. There was no allegation whatsoever against the petitioner herein that he is a henchmen of the defendants or that he had attempted to trespass upon the plaint schedule property and forcibly occupy the residential building situate therein. Though in paragraph 6 of the plaint, the plaintiff had averred that he and his family members are residing in building bearing door No.VI/242, situate in the plaint schedule property, in O.P.(C).No.1742 of 2013 ..16.. the schedule to the plaint the door number of the building was not given. Though in Ext.C1 report, the Advocate Commissioner has reported that the petitioner's mother, sister and sister's daughter were found in building bearing door No.VI/242 of Chakkupallam Grama Panchayat, the Advocate Commissioner did not notice the presence of the plaintiff's wife and children who according to him were residing with him in the said building till 8.8.2012 (vide paragraph 1 of Ext.P2 affidavit filed by him in I.A.No.857 of 2012). If the averments in I.A.No.857 of 2012 are to be taken as correct and believed, the case of the plaintiff is that he was residing in the plaint schedule property with his wife and children who admittedly left him only on 8.8.2012. As per the said affidavit, it is only since 8.8.2012 that the plaintiff's mother started residing with him in the building situate in the plaint schedule property. On the very averments made by the plaintiff, I am of the considered opinion that no reliance can be placed on Ext.C1 report wherein the Advocate Commissioner has reported that the plaintiff's mother, sister and sister's child were present in the building situate in the plaint schedule property. The Advocate Commissioner who inspected the property on 4.6.2012 pursuant to the order passed on I.A.No.858 of 2012 has reported that the additional fifth defendant is residing therein with his wife and family members. The door number of the O.P.(C).No.1742 of 2013 ..17.. building is mentioned therein as VI/95 (New No.VII/201). This anomaly is also not explained by the plaintiff. While the first Advocate Commissioner did not report about any of the movables in the house, the second Commissioner has reported about the movables, evidently meaning thereby that the first Commissioner did not open the house and enter and inspect it. That apart, the petitioner did not, even after the additional fifth defendant got

himself impleaded by filing I.A.No.1296 of 2012 which was allowed unopposed by order passed on 21.7.2012, suitably amend the plaint or the various applications by incorporating a plea to the effect that he has trespassed upon the plaint schedule property after the interim order of injunction was passed at the behest of defendants 1 to 4. The case set out by the additional fifth defendant in the affidavit filed in support of his application seeking impleadment as the additional fifth defendant is that he is in possession and management of the plaint schedule property on behalf of the real owner. The additional fifth defendant has explained his presence in the plaint schedule property as an agent of the original owner. He has also averred that the plaintiff had surrendered possession of the plaint schedule property to the brother of George, the original owner, and that thereafter he is in possession and management of the property for and on behalf of the original owner. This averment O.P.(C).No.1742 of 2013 ..18.. in paragraph 2 of the affidavit filed by the additional fifth defendant in support of I.A.No.1296 of has not been controverted by the plaintiff by filing objections or by appropriately amending the plaint and the various applications in the suit. It was evidently for these reasons that the trial court held in Ext.P4 order, that the fifth respondent was occupying the plaint schedule property at the time of inspection by the Advocate Commissioner who submitted Ext.C2 commission report and that it cannot find any violation of the order of the court by any of the parties. In view of these facts and the finding entered by the trial court itself that no violation of the order passed by the trial court on 21.4.2012 has been made out, I am of the opinion that the trial court erred in allowing I.A.No.797 of 2012 and 857 of 2012 and directing the additional fifth defendant to vacate the plaint schedule property. Such a direction could have been issued only after entering a finding that the additional fifth defendant had trespassed upon the plaint schedule property and reduced it to his possession in violation of the order of injunction passed on 21.4.2012. There was also no material to enable the court below to come to such a conclusion. The lower appellate court also lost sight of this crucial aspect notwithstanding the fact that the additional fifth defendant had in the appeal and in the interlocutory applications filed by him in the appeal reiterated the case set out by O.P.(C).No.1742 of 2013 ..19.. him in the application for impleadment that he is in possession and management of the plaint schedule property ever since 15.4.2012

on behalf of the real owner, after the plaintiff surrendered possession thereof to the brother of the real owner. I am therefore of the considered opinion that Ext.P4 order and Ext.P10 judgment cannot be sustained. However, having regard to the fact that I.A.No.797 of 2012 and 857 of 2012 were heard on 9.8.2012 within two weeks from the date on which the additional fifth defendant was impleaded on his request, I am of the opinion that the trial court should reconsider I.A.No.797 of 2012 after giving the plaintiff an opportunity to suitably amend the pleadings if so advised. I accordingly allow the original petition, set aside Ext.P4 order dated 6.9.2012 passed by the Court of the Munsiff of Kattappana on I.A.No.797 of 2012 and I.A.No.857 of 2012 in O.S.No.143 and Ext.P10 judgment dated 3.4.2013 passed by the Court of the Subordinate Judge of Kattappana in C.M.A.No.39 of 2012 and 40 of 2012, restore I.A.No.797 of 2012 to file and direct the trial court to hear and dispose of the said application afresh, expeditiously and in any event within an outer limit of two months from the date of receipt of a copy of this judgment. It will be open to the first respondent/plaintiff to suitably amend the pleadings, if so advised, by taking appropriate steps in that regard within two weeks from the O.P.(C).No.1742 of 2013 ..20.. date of receipt of a copy of this judgment. I.A.Nos.856 and 857 shall stand dismissed. The court below shall also endeavour to try and dispose of the suit untrammelled by the observations and findings in the impugned orders and this judgment, expeditiously and in any event within an outer limit of six months from the date of receipt of a copy of this judgment. Sd/- P.N.RAVINDRAN, JUDGE. rkc.

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