

J.Mohankumar Vs. R.D.O.

J.Mohankumar Vs. R.D.O.

SooperKanoon Citation : sooperkanoon.com/1133719

Court : Kerala

Decided On : Feb-21-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : J.Mohankumar

Respondent : R.D.O.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 21ST DAY OF
FEBRUARY 2014 2ND PHALGUNA, 1935 OP(Crl.).No. 24 of 2014 (Q)
----- (IN PROCEEDINGS NO.B2 - 4039/2012 OF RDO
COURT, ADOOR) PETITIONER(S): PETITIONER:
----- J.MOHANKUMAR, MANASWINI, THENGAMOM,
PALLICKAL, ADOOR TALUK. BY ADV. SRI.MANSOOR.B.H.
RESPONDENT(S): RESPONDENTS/COUNTER PETITIONERS:
----- 1. REVENUE
DIVISIONAL OFFICER, ADOOR, PIN. 691 523.

2. VILLAGE OFFICER, PALLICKAL - 691 523.

3. BINDHU, BINDHU NIVAS, THENGAMOM, ADOOR TALUK 691523.

4. M.R. RAJAN, N.R.NIVAS, THENGAMOM, PALLICKAL, ADOOR
TALUK 691523. R1 & R2 BY GOVERNMENT PLEADER SMT.S. HYMA THIS OP

(CRIMINAL) HAVING COME UP FOR ADMISSION ON 21-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kss OP(Crl.).No. 24 of 2014 (Q) ----- APPENDIX PETITIONER(S)' EXHIBITS: ----- EXT.P1 - TRUE COPY OF THE COMPLAINT DATED 21-5-2012 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT. EXT.P2 - TRUE COPY OF THE REPORT DATED 23-6-2012 SUBMITTED BY THE SECOND RESPONDENT TO THE FIRST RESPONDENT. EXT.P3 - TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 14-9-2012. EXT.P4 - TRUE COPY OF THE REPORT DATED 7-9-2013 SUBMITTED BY THE SENIOR SUPERINTENDENT TO THE FIRST RESPONDENT. RESPONDENT(S)' EXHIBITS: ----- N I L /TRUE COPY/ P.S. TO JUDGE Kss K. RAMAKRISHNAN, J.

..... O.P.(Crl.).No.24 of 2014
..... Dated this the 21st day of February, 2014.

JUDGMENT

This is an application filed by the petitioner seeking early disposal of Ext.P1 complaint under Section 133 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') by issuing a direction to the concerned Sub Divisional Magistrate under Article 227 of the Constitution of India.

2. The petitioner filed Ext.P1 complaint before the Sub Divisional Magistrate seeking relief under Section 133 of the Code of Criminal Procedure alleging that certain trees standing in the property of respondents 3 and 4 are causing eminent danger. On the basis of the complaint, a report was called for by the Sub Divisional Magistrate from the second respondent, the Village Officer and the second respondent submitted Ext.P2 report and thereafter the case has not been completed and it is pending for the last one year. So he has no other option except to approach this Court seeking the following relief: To issue an order or direction to command the first respondent to complete the proceedings on Ext.P1 complaint as expeditiously as possible at any rate within a time limit to be fixed by this Honourable Court. O.P.(Crl.).No.24 of 2014 2 2. On the basis of the allegations in

the petition, a report has been called for from the Sub Divisional Magistrate and the first respondent filed a statment through senior Superintendent of that office which reads as follows :

1. It is submitted that Sri. Mohankumar, Manaswini, Pallikkal Village of Adoor taluk filed a petition dated 25.5.2012 before this office and in which he alleged that Rubber tress and Pala tree standing in the landed property of hgis neighbour's named Smt. Bindu, 'Bindu Nivas' and Sri. M.R. Rajan, MR Nivas, causing damages to the petitioners residential building and boundary wall.

2. It is submitted that the Village Officer Pallikkal reported that the above said trees are in a dangerous situation and which is harmful to the life and property of the petitioner. Based on the report of Village Officer, Pallikkaal, hearing and site inspection was conducted on 8.8.212 and 4.9.2013 respectively.

3. It is submitted that at the time of site inspection it was found that the above said trees are standiang in a dangerous situation. The Pala tree standiang in the eastern part is v ery dangerous to the boundary wall of the petitioner.

4. It is submitted tht in the above circumstance preliminary order u/s 133 Cr.P.C was issued on 24.9.2013 to cut and remove the pala tree and the branches of rubber trees within 14 days on receipt of the order or to appear before this court and show cause why the order should not be made absolute.

3. The counter petitioner was not obeyed the order so far. In order to make the order absolute u/s 138 Cr.P.C, next hearing posted on 19.9.2014. O.P.(CrI).No.24 of 2014 3 4. When this was pointed out to the counsel for the petitioner, he submitted that the date of posting mentioned in the statement as 19.9.2014 is a mistake and really it was 19.2.2014 and he will be satisfied if a direction is given to the Sub Divisional Magistrate to dispose of the case within a time frame. Considering the circumstances, this Court felt that this petition itself can be disposed of by issuing a direction to the first respondent namely Sub Divisional Magistrate, Adoor to dispose of Ext.P1 proceedings pending before that court within a period of three months after complying with all the procedures under Sections 137 and 138 of the Code and in accordance with law. So the petition is

allowed and the Sub Divisional Magistrate Adoor is directed to dispose of Ext.P1 complaint pending before that court filed by the petitioner as expeditiously as possible at any rate within three months from the date of receipt of a copy of this order after complying with the procedures contemplated under Sections 137 and 138 of the Code in accordance with law. Office is directed to communicate this order to the concerned Sub Divisional Magistrate immediately. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge O.P.(Crl).No.24 of 2014 4

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com