

Jose Varghese Vs. Lasser

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SooperKanoon Citation : sooperkanoon.com/1167080

Court : Kerala

Decided On : Nov-04-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Jose Varghese

Respondent : Lasser

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN TUESDAY, THE 4TH DAY OF NOVEMBER 2014 13TH KARTHIKA, 1936 OP(C).No. 2526 of 2014 (O) ----- (OS4152014 of MUNSIFF COURT, PERUMBAVOOR) PETITIONER: ----- JOSE VARGHESE, AGED 43 YEARS S/O.VARGHESE, KUREECKAL HOUSE, CHALAKKAL KARA MARAMPILLY.P.O-683507, ALUVA EAST VILLAGE. BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR) SRI.GEORGE VARGHESE KIZHAKKAMBALAM RESPONDENTS: -----

1. LASSER,, AGED 60 YEARS S/O.ABRAHAM, MOLATHUKUDY HOUSE, CHITTANAD KARA KUNNATHUNADU VILLAGE, KUNNATHUNADU TALUK KUMARAPURA.P.O-683565.
2. JINSON, AGED ABOUT 22 YEARS S/O.LASSER, MOLATHUKUDY HOUSE, CHITTANAD KARA KUNNATHUNADU VILLAGE, KUNNATHUNADU TALUK KUMARAPURAM.P.O, PIN-683565. BY ADV. SRI.BABY ANTONY FOR R1 & R2. THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 04-11-2014, THE COURT

ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 2526 of 2014
(O) ----- APPENDIX PETITIONER(S)' EXHIBITS
----- EXT.P1 COPY OF PLAINT IN O.S.415/2014
DATED 16.10.2014 OF MUNSIFF'S COURT, PERUMBAVOOR. EXT.P2 COPY OF
THE REPORT OF THE TALUK SURVEYOR DATED 10.12.07 BEARING NO.C5-
5060/07. EX.P3 COPY OF THE SURVEY PAN OF C SCHEDULE ROAD
PREPARED BY THE TALUK SURVEYOR. EXT.P4 COPY OF LETTER NO.C5-
5060/07 SENT BY THE ADDITIONAL TAHSILDAR KUNNATHUNADU TO THE
SECRETARY OF KUNNATHUNADU GRAMA PANCHAYATH DATED 21.12.2007.
EXT.P5 COPY OF THE COMPLAINT FILED BY THE RESIDENTS OF AIRAM
KUNNU HARIJAN COLONY BEFORE THE ERNAKULAM DISTRICT
COLLECTOR DATED 12.08. EXT.P6 COPY OF THE LETTER ISSUED BY THE
TAHSILDAR KUNNATHUNADU TALUK TO THE PANCHAYATH
SECRETARY, KUNNATHUNADU BEARING NO.C2-1467/08 DATED 6.2.08.
EXT.P7 COPY OF PETITION FILED BY THE PETITIONER BEFORE THE
ADDITIONAL DISTRICT MAGISTRATE ON 14.2.08. EXT.P8 COPY OF THE
PETITION FILED BY THE PETITIONER AS I.A.2327/14 IN O.S.415/14
DATED 16.10.14. EXT.P9 COPY OF

ORDER

DATED 17.10.2014 IN I.A.2327/14 IN O.S.415/14. EXT.P10 COPY OF REPORT
FILED IN I.A.2328/14 IN O.S.415/14 DATED 18.10.2014. EXT.P11 COPY OF
ROUGH SKETCH FILED BY THE COMMISSIONER ALONG WITH EXT.P10
REPORT. EXT.P12 COPY OF OBJECTION FILED BY THE RESPONDENTS TO
THE INJUNCTION PETITION IN O.S.415/14. EXT.P13 COPY OF
PHOTOGRAPHS OF B SCHEDULE PROPERTY AND C SCHEDULE WAY (3 IN
NUMBERS) EXT.P14 COPY OF PETITION FILED BY PETITIONER AS
I.A.2425/14 IN O.S.415/14 FOR APPOINTING COMMISSIONER AND
SURVEYOR DATED 27.10.2014. OP(C).No. 2526 of 2014 (O) EXT.P15 COPY OF
PETITION FILED BY THE PETITIONER AS I.A.2426/14 IN O.S.415/14 FOR
TEMPORARY INJUNCTION DATED 24.10.14. EXT.P16 COPY OF PETITION
FILED AS I.A.2424/14 IN O.S.415/14 FOR ADVANCING THE CASE
DATED 24.10.14. RESPONDENT(S)' EXHIBITS : -----
EXT.R1(a) : COPY OF SETTLEMENT DEED No.3190/14 DTD. 7.5.14. EXT.R1(b)

: COPY OF POSSESSION CERTIFICATE FROM KUNNATHUNADU VILLAGE
DTD. 4.7.14. EXT.R1(c) : COPY OF NO OBJECTION CERTIFICATE DTD.25.8.14
FROM KUNNATHUNADU GRAMA PANCHAYATH. // True Copy // P.A. to Judge.
smp P.BHAVADASAN, J.

----- Original Petition (Civil) No.2526
OF2014----- Dated this the 4th day of November,
2014.

JUDGMENT

In this writ petition, the relief sought for is as follows: i. To issue necessary directions to the Munsiff's Court, Perumbavoor to advance O.S.415/14 and Exhibit P14 & P15 petitions to a nearest possible date and pass appropriate orders in the petitions within a time limit as directed by this Hon'ble Court.

2. The grievance of the petitioner is that the respondents herein are constructing a building encroaching into a portion of the road in violation of the Building Rules and contrary to the directions issued by the authorities concerned. The petitioner moved O.S.No.415/14 before the Munsiff's Court, Perumbavoor and the said court passed an interim order which reads as follows: ".....temporary injunction be awarded to restrain the defendants from removing soil from plaint B schedule without keeping a distance of 2 meters until further orders". O.P.(C) No.2526/2014

2 3. The grievance of the petitioner is that without determining the road margin, the above order cannot carry any meaning. The petitioner relies on Exts.P2, P3 and P4 which show that there has been encroachment into public road and that fortifies his contention that the construction is after trespassing into the public road. The petitioner further points out that he has filed an application for issuance of a commission to fix the road margin or in other words, the width of the road that was in existence at the relevant time. He has also filed an application for injunction restraining the respondents from making any construction until the report and plan is filed by the Commissioner. The petitioner has filed an application for advancing the hearing of the case also.

4. Learned counsel appearing for the respondents pointed out that the petitioner has not made the Panchayath concerned as party to the proceedings and even though there are series of allegations, they have not taken any action in spite of trespass alleged to have been made by the respondents. It is again pointed out that the respondents are constructing the building O.P.(C) No.2526/2014 3 strictly in terms of the plan issued to them by the Panchayath and they have not encroached into any portion of the public road as alleged in the plaint.

5. It is pointed out that the application filed by the petitioner for issuance of a commission to fix the road margin on either sides and the width of the road available is coming up for consideration on 07.11.2014.

6. In the light of the said fact, direction sought for to advance the hearing of the application for issuance of a commission is unnecessary. There is no reason to believe that the court below will not take up the matter on 07.11.2014, consider the same and pass orders on the commission application and also on the application for injunction restraining the respondents from making any construction until the report and plan is filed by the Commissioner.

7. The Court ordered status quo at the time of admission of the original petition. In the light of the fact that the petitioner has filed a commission application to fix the road margin and also the fact that the respondents have obtained permission from the O.P.(C) No.2526/2014 4 Panchayath for making constructions, it is felt that it will not be proper for this Court to pass an interim order restraining the respondents from making any construction especially when a petition for that purpose is pending consideration. While declining the prayer for advancement of hearing of the application for issuance of commission, the court below shall dispose of the application for issuance of commission and also the application for interim injunction as sought for by the petitioner in accordance with law and in the light of what has been stated above. This Original Petition is disposed of as above.
Sd/- P.BHAVADASAN JUDGE smp