

Joseph vs Joseph George

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SooperKanoon Citation : sooperkanoon.com/1320806

Court : Kerala

Decided On : Jan-11-2024

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : OP(C)/2854/2023

Appellant : Joseph

Respondent : Joseph George

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
THURSDAY, THE 11TH DAY OF JANUARY 2024 / 21ST POUSHA,
1945 OP(C) NO. 2854 OF 2023 OS 137/2022 OF MUNSIFF COURT,
ETTUMANOOR PETITIONER/PLAINTIFF: 1 JOSEPH AGED 68 YEARS
S/O. THOMMEN, MAROTTIYIL HOUSE, MARIDAM KARA,
KIDANGOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT,
PIN - 686577 BY ADVS. R.VENUGOPAL C.L.JOSEPH (KTYM)
RESPONDENT(S)/DEFENDANTS: 1 JOSEPH GEORGE AGED 76
YEARS S/O M.K.JOSEPH, MANALIL HOUSE, AIMANAM VILLAGE,
AIMANAM KARA, KOTTAYAM TALUK,KOTTAYAM DISTRICT, PIN -
686001 2 ROSAMMA GEORGE AGED 74 YEARS W/O GEORGE,

MANALIL HOUSE, AIMANAM VILLAGE, AIMANAM KARA, KOTTAYAM TALUK, KOTAYAM DISTRICT, PIN - 686001 BY ADVS. MATHEW JOHN ABY J AUGUSTINE(K/000302/2018) THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 11.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.JAYACHANDRAN, J.

----- Dated this the
11th day of January, 2024

JUDGMENT

This Original Petition is preferred by the plaintiff in O.S. No.137/2022 pending before the Munsiff's Court, Ettumanoor. The suit is preferred by the plaintiff seeking injunction simpliciter from forcible eviction from the plaint schedule property. The petitioner/plaintiff would acknowledge that there is a decree vide Ext.P3 directing him to surrender vacant possession of the property to the respondents herein, which has become final. However, the scope of the present suit is to prevent the respondents from dispossessing the petitioner forcefully, otherwise than in execution of Ext.P3 decree. Along with the instant suit, the petitioner moved for an application for a temporary injunction. The same was dismissed by the learned Munsiff, challenging which, a Civil Miscellaneous Appeal was filed. The same is pending. However, by virtue of Ext.P6 interim order, the respondents in the C.M.A. (respondents herein) were restrained from forcibly dispossessing the petitioner herein from the schedule property. The learned District Judge also clarified that said order will not stand in the way of respondents herein from executing the earlier decree, in accordance with law.

2. The present suit was listed for trial. The

petitioner/plaintiff moved an application to remove the same from the list, on the premise that C.M.A. was pending. The same was dismissed, which order is impugned herein, however, without producing the same.

3. Having heard the learned counsel for the

petitioner, this Court finds no merit in the instant Original Petition. The pendency of C.M.A. is no bar for proceeding with the trial of the suit, especially when the interest of the petitioner/plaintiff is protected by virtue of Ext.P6 order by preventing forcible dispossession. The interim application is to preserve the interest of the parties pendente lite and the scope of a Civil Miscellaneous Appeal from an interim order can only be the same. The pendency of the C.M.A., at any rate, cannot stand in the way of proceeding with the trial in the main suit. This court finds no merit in the instant Original Petition, therefore, the same would stand dismissed. Sd/- C. JAYACHANDRAN JUDGE SKP/11-01 APPENDIX OF OP(C) 2854/2023 PETITIONERS EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PLAINT IN OS.NO.137/2022 ON THE FILE OF THE HONOURABLE MUNSIIFF COURT, ETTUMANOOR EXHIBIT P2 TRUE COPY OF THE IA NO 1/2022 IN OS NO 137/2022 ON THE FILE OF THE MUNSIFF COURT, ETTUMANOOR EXHIBIT P3 TRUE COPY OF THE DECREE DATED 28.2.2022 OF THE HONOURABLE MUNISFF COURT, ETTUMANOOR EXHIBIT P4 TRUE COPY OF THE CMA NO 3/2023 ON THE FILE OF THE HONOURABLE DISTRICT COURT V, KOTTAYAM EXHIBIT P5 TRUE COPY OF THE IA NO 3/2023 IN CMA NO.3/2023 ON THE FILE OF THE HONOURABLE DISTRICT COURT V, KOTTAYAM EXHIBIT P6 TRUE COPY OF THE ORDER DATED 17.3.2023 IN IA NO. 3/2023 IN CMA NO.3/2023 OF THE ADDITIONAL DISTRICT COURT V EXHIBIT P7 TRUE COPY OF THE IA NO 8/2023, DATED 4.12.2023, FILED BY THE PETITIONER TO REMOVE THE CASE FROM THE LIST EXHIBIT P8 TRUE COPY OF THE RESTORATION PETITION (RP) NO FILED BY THE PETITIONER RESPONDENTS' EXHIBITS:NIL TRUE COPY P.A. TO JUDGE