

Thomas Joseph vs Koshy Joseph

Thomas Joseph vs Koshy Joseph

SooperKanoon Citation : sooperkanoon.com/1441572

Court : Kerala

Decided On : Sep-23-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : CRP/22/2020

Appellant : Thomas Joseph

Respondent : Koshy Joseph

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 23RD DAY OF SEPTEMBER 2022 / 1ST ASWINA, 1944 CRP NO. 22 OF 2020 AGAINST THE ORDER/JUDGMENT CMA 26/2019 OF SUB COURT, CHERTHALA REVISION PETITIONER/S: 1 THOMAS JOSEPH AGED 56 YEARS S/O.JOSEPH KOSHY,LEMON VILLA, CHERTHALA NORTH VILLAGE,CHERTHALA.P.O, ALAPPUZHA, 2 TEDY THOMAS, AGED 30 YEARS S/O.JOSEPH KOSHY,LEMON VILLA,CHERTHALA NORTH VILLAGE,CHERTHALA.P.O, ALAPPUZHA, BY ADV T.S.HARIKUMAR(K/782/1989) RESPONDENT/S: 1 KOSHY JOSEPH S/O.JOSEPH KOSHY,LEMON VILLA,CHERTHALA NORTH VILLAGE,CHERTHALA.P.O,ALAPPUZHA, 2 BEN JOSEPH KOSHY,

AGED 29 YEARS S/O.KOSHY JOSEPH,LEMON VILLA,CHERTHALA NORTH VILLAGE,CHERTHALA.P.O,ALAPPUZHA, BY ADV SRI.K.RAMANANDAN THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 23.09.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S DIAS,J.

----- Dated this the 23rd day of
September, 2022.

ORDER

The revision petition is filed challenging the

judgment in CMA 26/2019 of the Court of the

Subordinate Judge, Cherthala.

2. The revision petitioners are the plaintiff and the third defendant in OS No.443/2019 of the Court of

the Principal Munsiff, Cherthala (Trial Court). The respondents are the defendants 1 and 2 in the suit. The parties are, for the sake of convenience, referred to as per their status in the suit.

3. The suit is filed for declaration, partition and

permanent prohibitory injunction. The first defendant is the brother of the plaintiff, the second defendant is the son of the first defendant and the third defendant is the son of the plaintiff. The plaintiff also filed IA 2960/2019, inter-alia, to restrain the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the plaint schedule property. The Trial Court allowed the application as prayed for.

4. Challenging the order passed by the Trial Court in IA No.2960/2019, the defendants 1 and 2 filed CMA 26/2019 before the Court of the Subordinate Judge, Cherthala (Appellate Court).

5. The Appellate Court, by the impugned judgment, modified the order of the Trial Court by not only

restraining the defendants 1 and 2 from forcefully evicting the plaintiff and his family members from the building situated in item No.1 property, but also by restraining the plaintiff or anybody under him from causing any type of obstruction to the second defendant or the employees of the Paradise Theatre, Cherthala, in functioning the said Theatre situated in the plaint schedule property.

6. The impugned judgment was passed on 7.12.2019.

7. The revision petition is filed by the plaintiff and the third defendant aggrieved by the impugned judgment. Even though this Court had admitted the

revision petition, this Court declined to pass an order

staying the operation of the impugned judgment. Thus, the impugned judgment continues to remain in force since 7.12.2019. Admittedly, the parties are complying with the directions in the said judgment.

8. When the revision petition came up for consideration on 30.8.2022, this Court had called for a report from the Trial Court, to ascertain the time period required to dispose of OS 443/2019.

9. The learned Principal Munsiff, Cherthala, by

communication dated 13.9.2022, has informed this Court that issues have been framed in the suit and the trial in the suit can be commenced immediately, and the suit can be disposed of within four months from 14.9.2022.

10. I have gone through the pleadings, materials on record and the order passed by the Trial Court in IA

11. On a consideration of the materials on record,

and keeping in mind the fact that the order of injunction as per the impugned judgment is in force from 7.12.2019, ie., for the last nearly three years, and this Court had declined to stay its operation, I am of the firm view that without disturbing the present arrangement that is being followed by the parties, a quietus can be given to the revision petition by directing the Trial Court to consider and dispose of the suit itself within a time

frame fixed by this Court, untrammelled by the observations made by the Trial Court and Appellate Court in the order and judgment, which will render complete justice to both sides. In the result, in exercise of the revisional jurisdiction of this Court under Sec.115 of the Code of Civil Procedure, I dispose of the revision petition in the following manner:

(i) The Court of the Principal Munsiff, Cherthala, is directed to consider and dispose of OS No.443/2019, in accordance with law, as expeditiously as possible, at any rate on or before 23.12.2022.

(ii) The court below shall dispose of the suit untrammelled by any observations made in the

order in IA 2960/2019 and the impugned

judgment in CMA 26/2019, which were made for

the sole purpose of deciding the interim reliefs sought by the parties.

(iii) The parties shall bear their respective costs. sd/- Sks/23.9.2022 C.S.DIAS,
JUDGE

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