

Fr.Augustine John, vs Titus

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SooperKanoon Citation : sooperkanoon.com/1724492

Court : Kerala

Decided On : Oct-29-2021

Judge : Honourable Mr. Justice Shaji P.Chaly

Appeal No. : OP(C)/3032/2019

Appellant : Fr.Augustine John,

Respondent : TITUS

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SHAJI P.CHALY
TUESDAY, THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA,
1943 OP(C) NO. 3032 OF 2019 AGAINST THE JUDGMENT IN OS
461/2016 OF I ADDITIONAL MUNSIFF COURT NEYYATTINKARA,
THIRUVANANTHAPURAM PETITIONERS/ADDL.DEFENDANTS NOS.5
TO 8:

1 FR.AUGUSTINE JOHN, AGED 53 YEARS S/O.ANTONY JOHN,
PRESIDENT AND PARISH PRIEST, ST.MARY MAGDALENE
CHURCH, PARUTHIYOOR, POZHIOOR. 2 VAVEENJU, AGED 75
YEARS S/O.SUSA MICHAEL, CHEELANTHIVILAKOM, POZHIOOR,

SECRETARY OF CHURCH COMMITTEE OF ST.MARY MAGDALENE CHURCH, PARUTHIYOOR, POZHIYOOR. 3 S.GILBERT, AGED 62 YEARS S/O.KESHUPILLA, KAIPPETTAVILA, POZHIYOOR, TREASURER OF CHURCH COMMITTEE OF ST.MARY MAGDALENE CHURCH, PARUTHIYOOR, POZHIYOOR. 4 P.LEEN, AGED 53 YEARS S/O.PANIYADIMA, PALLIVILAKAM, CO-ORDINATOR OF 1ST DEFENDANT, PARUTHIYOOR, POZHIYOOR, CO-ORDINATOR OF CHURCH COMMITTEE OF ST.MARY MAGDALENE CHURCH, PARUTHIYOOR, POZHIYOOR. BY ADVS. SRI.G.SREEKUMAR (CHELUR) SMT.V.JAYA RAGI SMT.INDULEKHA JOSEPH SRI.NEERAJ NARAYAN

O.P.(C) No.3032 of 2019 2 RESPONDENTS:

1 TITUS AGED 58 YEARS S/O.THIYONS, RESIDING AT RESHMA VILLA, PANICKER THOTTAM, KULATHOOR VILLAGE, POZHIYOOR P.O., -695513. 2 ST.MARY MAGDALENE CHURCH, PARUTHIYOOR, POZHIYOOR, KULATHOOR CHURCH REPRESENTED BY ITS VICAR AND PRESIDENT OF THE CHURCH COMMITTEE, REV. FR. FREDDY SOLOMON-695513. 3 ALBERT, AGED 50 YEARS S/O.MARCELIE, SECRETARY, CHURCH COMMITTEE, ST.MARY MAGDALENE CHURCH, PARUTHIYOOR, POZHIYOOR-695513. 4 RAJU, TREASURER, CHURCH COMMITTEE, ST.MARY MAGDALENE CHURCH, PARUTHIYOOR, POZHIYOOR-695513. 5 FRANCIS, AGED 40 YEARS SECRETARY, CHURCH COMMITTEE, ST.MARY MAGDALENE CHURCH, PARUTHIYOOR, POZHIYOOR-695513. BY ADV SRI.K.B.PRADEEP THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 26.10.2021, THE

COURT ON 29.10.2021 DELIVERED THE FOLLOWING: O.P.(C) No.3032 of 2019 3

JUDGMENT

Dated this the 29th day of October, 2021 This original petition is filed under Article 227 of the Constitution of India, seeking to

set aside Exhibit P9 order dated 11.9.2018 in I.A.No.4378/2018 and I.A.No.4269/2018 in O.S.No.469/2016 on the files of the Additional Munsiff - I, Neyyattinkara and for a further direction to the court below to reconsider and pass orders in I.A.No.4378 of 2018 afresh. The suit is filed by the first respondent herein, claiming to be a tenant under the first defendant church, seeking permanent prohibitory injunction against the defendants from forcibly evicting him from the Plaintiff schedule building premises. An ex-parte injunction order was granted, which was affirmed after hearing the parties then on record. The case has a

chequered history and therefore the facts have to be narrated in detail. Petitioners are defendants 5 to 8 in O.S.No.461/2016, who are said to be elected committee members of the 1st defendant church and impleaded as per the orders in an application dated 05.12.2017. Before the court below, they have filed the aforesaid applications under Order XLVII Rule 1 of the Code of Civil Procedure seeking to review the order in I.A.Nos.3627/2017 and I.A.No.2424/2016, on the ground that, there are errors apparent on the face of the record, liable to be reviewed. Defendants 2 to 4 have completed their term in church committee of the first defendant, which functions as per the bye-laws of Thiruvananthapuram Latin Athirupatha and the property of vicarage is vested with the Dhanakarya Samithi, which is not made a party in the suit. Hence, the injunction order in I.A.No.3627/2017 against the

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vicarage, is null and void. The injunction order cannot also be sustained as the plaintiff has himself used a stamp paper to forge an agreement and the rent agreement is not entered into by public tender, as is required. Therefore, according to the petitioners, they were not liable to hand over possession as per the orders in I.A.No.2424/2016. It was also contended that the suit is bad for non joinder of necessary parties for not impleading the Secretary of the Dhanakarya Samithi.

2. The sum and substance of the contention is that the order in I.A.No.2424/2016 is

not executable and is contrary to the decision of this Court in Pushpadasan v. Sheela Jerald & others [2017(2)KHC 162]. Therefore, according to the petitioners, there was a clear error that the court below did not consider the fraud played by the plaintiff(1st respondent). Therefore, the order in I.A.No.3627/2017 ought to have been reviewed.

3. The 1st respondent herein had filed objections to the aforesaid interlocutory

application contending that the 1 st defendant in the suit is the church, that was represented by the then Vicar and Chairperson of Dhanakarya Samithi; that the plaintiff was forcibly dispossessed by the 1st defendant church and other defendants, who were committee members after the order of injunction was affirmed by the court below. According to the 1st respondent/plaintiff, there are no reasons to review the order in I.A. No.3627/2017. It was also pointed out that on 12.04.2018, notice was given to the defendants 5 to 8 in the application to implead them, but they did not appear. They appeared on 27.7.2018 on summons and the matter was posted to 30.7.2018 for hearing. But the said defendants did

O.P.(C) No.3032 of 2019 5 not file an objection or cared to make any arguments, upon which I.A.No.3627/2017 was allowed. According to the 1st respondent/plaintiff, petitioners/defendants 5 to 8 have not made out any case for review of the order. Therefore, according to the 1 st respondent, the

order in I.A.No.2424/2016 is executable. I.A.No.4269/2018 was filed by defendants 1 to 3

contending that the order in I.A.No.3627/2017 is contrary to the judgment of this Court in Pushpadasan (supra) ; that the matter was settled between the parties on 14.9.2017 and the impugned order is against the settlement and it is a mistake; that those matters could not be brought to the court's notice as the counsel has omitted inadvertently to represent the case. It was also submitted that the order was passed on the basis of a fabricated document viz.,the agreement. The said

interlocutory application was also objected to by the 1st respondent/plaintiff.

3. The court below after considering the rival submissions have found that the petitioners have prolonged the matter in spite of the injunction order of the court for long and appeared only when an adverse order was passed directing to restore possession of the Plaint schedule property to the 1st respondent. It was also found that many of the contentions raised in the review petition were not raised in the objection and it is for the first time that such objections are raised. It was also found by the court below that it was for the first time that the church has raised a contention that it has no control over the plain schedule building. That apart after assimilating the factual situations, the court below found that the copy of the interlocutory applications, in which orders were passed, were seen served to the counsel,

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who was holding vakalath of the parties in the mediation agreement i.e., the then Vicar of the church and Secretary and Treasurer of the church committee. Therefore, according to the court below, there was sufficient notice in I.A.No.5953/17 to the parties of the agreement and hence, the order therein binds them and therefore, the impugned orders are not to be reviewed on the grounds raised in the review petitions. It is thus challenging the legality and correctness of the order passed by the court below, this original petition is filed, invoking the supervisory jurisdiction of this Court.

4. I have heard learned counsel for petitioners Sri.G.Sreekumar (Chelur), Sri.K.B.Pradeep appeared for the 1st respondent and perused the pleadings and materials on record.

5. First respondent has filed the suit - O.S.No.461/2016, seeking a decree restraining

and prohibiting the defendants from forcibly dispossessing the plaintiff from the Plaint schedule building and also from causing any manner of disturbance or annoyance to the business carried on by the plaintiff. Apparently, in I.A

No.1917/2016, filed under Order XXXIX Rule 1 of the Code of Civil Procedure, an ad interim ex-parte temporary injunction was granted. The respondents in the interlocutory application have apparently filed

I.A.No.4398/2016 under section 151 of the CPC to dismiss and vacate the injunction order

granted in I.A.No.1917/2016.

6. The paramount contention advanced by the 1 st respondent /plaintiff was that the plaintiff was carrying on business in the Plaint schedule building belonging to the 1st O.P.(C) No.3032 of 2019 7

defendant church/2nd respondent, on the basis of a rent agreement executed with the 1 st defendant church. An amount of Rs.20,000/- was paid as advance and Rs.1,200/- was fixed as monthly rent. According to the 1 st respondent/plaintiff, a licence was secured from the concerned Grama Panchayat for conducting business of fishing equipment and accessories, and materials worth more than rupees 10 lakhs were stored in the building. The office bearers of the 1st defendant church demanded the 1st respondent/plaintiff to vacate the plaint schedule building, to which he was not amenable and therefore, the contention raised was that respondents 2 to 4 in the suit challenged that they will take possession of the plaint schedule building forcibly. It was under the said background that the suit and the interlocutory application were filed.

7. Various contentions were raised in respect of the maintainability of the suit and interlocutory application filed by the 1 st respondent. It was even contended that the alleged agreement executed by and between the parties, is a fabricated document apart from contending that the rent receipts produced by the 1 st respondent along with the suit, are all fabricated and therefore, contended that the injunction order granted needs to be vacated.

8. However, after taking into account all the circumstances, the court below found that

1st respondent has established a prima facie case by producing certain definite documents to prove his possession . However, the church and the officials have not produced any materials or evidence in their support. It was also found that the 1 st respondent is in lawful possession and therefore, the contention that the agreement and the receipts were fabricated, are all

O.P.(C) No.3032 of 2019 8 matters to be adjudicated on trial.

9. The order was passed in the interlocutory application after adduction of oral evidence by the 1st respondent and his witnesses and verifying the documents produced along with the suit. The court below has also relied upon the commission report in order to arrive at the prima facie conclusions in the interlocutory application. It was further found out by the court below that the rent agreement contained the signature of the Vicar of the church and the seal of the church. The court below has also found that the contention advanced that the rent agreement is by different people, cannot be believed, especially when the 1 st respondent had a case that the contents of the agreement is printed in the church's computer after production of the stamp paper by the 1st respondent.

10. In fact the court below had directed the church and the officials to produce the account books and minutes book of the church as per an order in I.A.No.3616/2016, filed by the 1st respondent, which was not complied by them and therefore, that was taken as a clear evidence for drawing an adverse inference against the 1 st respondent. Therefore, it can be seen that on the basis of clear cut findings alone, the ex-parte injunction order was granted. It was thereafter that the 1 st respondent has filed I.A.No.3035/2016 under Order XXXIX Rule 2A of the Code of Civil Procedure, for taking action against the violation of the order of injunction, and I.A No.2424/2016 was filed under section 151 of the CPC seeking to restore possession of the plaint schedule property to the 1 st respondent with police assistance. In the aforesaid interlocutory application, it was averred that on 10.4.2016, one of the committee

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members of the church and several other persons broke open the lock of the plaint schedule building forcibly and removed the entire articles without the 1st respondent's consent and therefore, according to the 1st respondent, the defendants have violated the order of injunction and accordingly, they were liable to be proceeded with.

11. Defendants/respondents 2 to 5 contended that there is no building bearing No.KP

church. The other contention with respect to the non-joinder of necessary parties for not impleading the Secretary of the Dhanakarya Samithi and other succeeding members, were also taken up in the court below and after understanding the situations, the applications were allowed and the church and the officials were directed to put the 1st respondent back in occupation of the plaint schedule shop room. However, since there was no evidence as to the exact materials that were taken away from the shop building, the relief accordingly sought for

was declined. Later the 1st respondent filed I.A No.5933/2017 seeking to discard the mediation agreement filed before the court, in which it was contended that in spite of the directions issued by the court to restore possession of the property to the 1st respondent, it was not obeyed by the church and the officials and therefore, I.A.No.3627/2017 was filed for the execution of the order and at that point of time, the church and its administrators approached the 1st respondent for compromise stating that the shop room would be given back to the 1st respondent, and believing those words and being a believer of the church agreed for the same and thus, the matter was referred for mediation, wherein the terms

O.P.(C) No.3032 of 2019 10 were reduced to writing, and the church and the officials had agreed to let the Plaint schedule room to the 1st respondent from October, 2017 afresh and the 1st respondent has also agreed to withdraw the suit on its basis.

12. According to the 1st respondent, such a mediated settlement agreement was

executed with the intention of cheating him, and after filing of the objection to the said I.A and hearing the parties, the court below found that the mediation agreement is vitiated by fraud and therefore, it is liable to be discarded and the suit was ordered to be proceeded with. Later in I.A.No.3647/2017 Exhibit P7 order dated 1st August, 2018 was passed after appreciating the rival submissions and accordingly appointed an Advocate Commissioner to execute the court's order in I.A.No.2424/2016 by adopting the means available under law and after due intimation to the Deputy Superintendent of Police, Neyyattinkara . It seems the 1st respondent in the meanwhile had approached this Court seeking Police protection by filing W.P.(C) No.17575/2019, which was allowed as per Exhibit P8 judgment dated 2/8/2019 and after assimilating the entire fact situation, the Division Bench of this Court has held as follows:

5. We see that, at the instigation of the 4th respondent, the parishioners

obstructed the execution of the Civil Court's order. We are dismayed that the police have been unable to implement the order of the Civil Court. We also see a report from the District Police Chief to the Additional Munsiff-1, wherein it is stated that the Amin has witnessed what occurred in the area due to the protest from the members of Parithiyoore diocese, which has resulted in the non- implementation of the order of the Civil Court. We cannot condone such actions

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by the Parishioners against the Civil Court orders; nor can the police express helplessness in implementing the same, which would raise serious questions on the maintenance of rule of law. If the local parishioners are allowed to take law into their hands and flout orders of competent courts then there would be mayhem and total disruption of law and order.

6. We had, on the last posting date, expressed our anguish to the learned

Senior Government Pleader, on whose instruction, The Deputy Superintendent of Police, Neyyattinkara along with the Station House Officer, Pozhiyoor Police Station is present before this Court. The Dy.S.P. and the S.H.O. submit that they have already taken steps to execute the warrant and that an application has been filed before the Additional Munsiff Court to depute the Amin on 09.08.2019 for the purpose of enabling such implementation. It is also submitted that the Commissioner has returned the warrant. In such circumstances, the learned Munsiff shall ensure that Amin is deputed on the said date. The petitioner shall also be present at the time of handing over of the premises. The Dy.S.P. and the S.H.O. would ensure that the premises are handed over to the petitioner. We dispose of the writ petition recording the undertaking of the Dy.S.P. and the S.H.O., who are present before us. There shall be no order as to costs.

13. It was after a period of 14 months from the said judgment that the present original petition was filed on 25.11.2019 seeking to set aside Exhibit P9 order passed by the court below in the review applications.

14. The sum and substance of the contention advanced in the original petition is that

since there was no agreement executed by and between the parties, the order of injunction O.P.(C) No.3032 of 2019 12 granted has become inconsequential and therefore, the order of execution of the interim

order passed by the court below, was bad. It was further contended that the order of

injunction was passed by the court below without properly taking into account the contentions advanced by the petitioners and the church; that the suit was not instituted against the proper parties; that the rent agreement and receipts were also fabricated documents. It was also contended that the successive office bearers of the church were not made parties and therefore, the interlocutory

application in which the orders passed by the court below were totally illegal. That apart it was contended that orders were passed without properly hearing the appropriate parties, which was highlighted by the petitioners in the review petition, which was not taken into account by the court below at all.

15. On the other hand learned counsel appearing for the 1st respondent have narrated the entire incidents leading to the passage of orders by the court below as are discussed above.

16. I have appreciated the rival submissions made across the Bar. In my considered

opinion, when there was an order of injunction passed by the court below and consequential orders were passed in order to implement the order of injunction, the church and the officials ought to have obeyed the orders rather than violating the same. It is an admitted fact that the order of injunction was granted against the forcible dispossession after hearing the parties. The contention as to whether the agreement and the rent receipts are fabricated, are all matters to be considered while adjudicating the matter finally in trial. The court was of the

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prima facie opinion that the 1st respondent was entitled to get an order of injunction. In fact it was granted ex parte and later it was found that certain agreements were executed by and between the parties and therefore, the continuance of the order of injunction was not required. It was accordingly that even though it was prima facie held that the 1st respondent was in possession of the property and there is no requirement for continuance of the orders as mentioned in Exhibit P4 order. However, later on filing of the applications by the 1st respondent, the court realised that the mediated settlement agreement was made with the intention of cheating and it was thereupon that, consequential orders and directions were issued to put the 1st respondent back in possession of the plaint schedule property.

17. Whatever that be, this Court in W.P.(C) No.17575/2019 as per its judgment dated

2.8.2019, has granted Police protection to the 1st respondent and directed the Munsiff and the Police to render adequate protection in order to ensure that the premises is handed over to the 1st respondent. When there are orders passed by the court below, and a learned Division Bench of this Court to restore possession, the church and the officials of the church and the State officials are duty bound to honour the orders of the court below and the

judgment of this Court. Compliance of the orders passed by the courts is a requirement of

the rule of law, and nobody can be permitted to take law into their hands and flout the orders passed by the courts, however High the power wielded by them in the corridors of power .

18. It is rather disappointing to note that in spite of the order passed by the Division O.P.(C) No.3032 of 2019 14

Bench of this Court and the orders of the court below, the orders could not be implemented and possession is not restored to the 1st respondent. I also see from the record of proceedings in the instant case that, even though an interim order was granted by this Court on the 18th December, 2019 for a period of 3 weeks, it was not extended. In spite of all the efforts made by the courts below and the directions issued by the Division Bench of this Court in the aforesaid writ petition, 1st respondent is not restored with the possession of the building which cannot be tolerated anymore, and in the peculiar facts and circumstances, attempt so made can only be seen as a challenge to the judicial framework and the democratic principles prevailing in the country.

19. In my considered opinion, the original petitioners, who are said to be the present

officials of the church, have taken law in their hands to ensure that the orders of the civil court and judgment of this Court are not implemented, which cannot be

permitted under any circumstances. It is curious to note that the findings rendered by the court below in Exhibit P4 injunction order and the consequential orders are not under much dispute. However the orders are still resisted by the petitioners by contending that the agreement and the documents produced by the 1st respondent to establish his case that he is a tenant in the church building, are all fabricated documents.

20. Anyhow the court below after assimilating the factual situations, has prima facie

found that the documents can be relied upon in order to pass orders. Therefore, I have no hesitation to hold that the petitioners have not made out any case for interference exercising O.P.(C) No.3032 of 2019 15 the supervisory jurisdiction conferred under Article 227 of the Constitution of India. Needless to say, the original petition fails, accordingly it is dismissed. Consequently,

taking into account the attendant facts and circumstances, I think it is only appropriate that necessary directions are issued to the court below to ensure that interlocutory orders passed by the court below, as discussed above, and the directions rendered by the learned Division Bench of this Court in Exhibit P8 judgment, are implemented at the earliest possible. Parties through their counsel, or in person are directed to appear before the court below on 8th November 2021 for proceeding with the implementation of the orders. The 1st respondent/ plaintiff or his counsel is directed to produce a certified copy of this Judgment before the court below sufficiently earlier to the said posting date along with a memo.

Sd/- SHAJI P. CHALY, smv JUDGE O.P.(C) No.3032 of 2019 16 APPENDIX OF OP(C) 3032/2019 PETITIONER EXHIBITS EXHIBIT P1 A TRUE PHOTOCOPY OF THE AGREEMENT BY NO.3677/2015 DATED 04.08.2015. EXHIBIT P2 A TRUE PHOTOCOPY OF THE PLAINT IN O.S.NO.461/2016 FILED BEFORE THE ADDL. MUNSIFF COURT-I, NEYYATTINKARA. EXHIBIT P3 A TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONERS. EXHIBIT P4 A TRUE PHOTOCOPY OF THE COMMON ORDER DATED

14.07.2017 IN I.A.NO.1917/2016 AND I.A.NO.4398/2016 IN O.S.NO.461/2016 PENDING BEFORE THE ADDL. MUNSIFF COURT-I, NEYYATTINKARA. EXHIBIT P5 A TRUE PHOTOCOPY OF THE COMMON ORDER DATED 14.07.2017 IN I.A.NO.3035/2016 AND I.A.NO.2424/2016 IN O.S.NO.461/2016 PENDING BEFORE THE ADDL. MUNSIFF COURT-I, NEYYATTINKARA.

EXHIBIT P6 A TRUE PHOTOCOPY OF ORDER DATED 02.02.2018 IN I.A.NO.5953/2017 IN O.S.NO.461/2016. EXHIBIT P7 A TRUE PHOTOCOPY OF ORDER DATED 01.08.2019 ISSUED BY THE COURT OF ADDL. MUNSIFF -I, NEYYATTINKARA IN I.A.NO.3627/2017 IN O.S.NO.461/2016. EXHIBIT P8 A TRUE PHOTOCOPY OF JUDGMENT DATED 02.08.2019 IN W.P.C NO.17575/2019. EXHIBIT P9 A TRUE PHOTOCOPY OF THE ORDER DATED 11.09.2018 IN I.A.NO.4378/2018 AND I.A.NO.4269/2018 IN O.S.NO.461/2016. EXHIBIT P10 A TRUE PHOTOCOPY OF I.A.NO.4378/2018 IN O.S.NO.461/2016 DATED 01.09.2018.

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