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Ravi Vs. Albia

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Court : Kerala

Decided On : Jul-01-2015

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Ravi

Respondent : Albia

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE1T DAY OF JULY2015/10TH ASHADHA, 1937 OP(C).No. 2910 of 2014 (O) ---------- AGAINST THE

ORDER
IN IA NO.541/2013 IN OS NO. 307/2013 of MUNSIFF COURT, CHITTUR DATED1811.2014 PETITIONER(S): ---------- 1. RAVI, S/O.VELAYUDHAN, AGED43YEARS2 SIVAKUMARAN, S/O.GOVINDAN3 RAJAKUMARAN,S/O.VELUCHAMI PETITIONERS ARE RESIDING ATPAZHANIYARPALAYAM, KOZHINJAMPARAVILLAGE, CHITTUR TALUK PALAKKAD DISTRICT. BY ADV. SRI.JACOB SEBASTIAN RESPONDENT(S): ---------- ALBIA, D/O.MADALAMUTHU, AGED13YEARS (MINOR), PAZHANIYARPALAYAM KOZHINJAMPARAVILLAGE, CHITTUR TALUK PALAKKAD DISTRICT PIN-678101 REPRESENTED BY HER MOTHERL JANCY MARY. BY ADV. SRI.SAJAN VARGHEESE K. BY ADV. SRI.LIJU. M.P THIS OP

(CIVIL) HAVING BEEN FINALLYHEARD ON0107-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C).No. 2910 of 2014 (O) ---------- APPENDIX PETITIONER(S)' EXHIBITS ---------- EXT. P1 : TRUE COPY OF THE PLAINT IN ORIGINAL SUIT NUMBER3072013 OF THE COURT OF THE MUNSIFF OF CHITTUR. EXT. P2 : TRUE COPY OF THE WRITTEN STATEMENTFILED BY THE PETITIONERS IN ORIGINAL SUIT NUMBER3072013 OF THE COURT OF THE MUNSIFF OF CHITTUR. EXT. P3 : TRUE COPY OF THE INTERLOCUTORYAPPLICATION NUMBER5412014 IN ORIGINAL SUIT NUMBER307OF 2013 OF THE COURT OF THE MUNSIFF OF CHITTUR. EXT. P4 : TRUE COPY OF THE

ORDER
DTD.NOVEMBER18 2014 IN INTERLOCUTORY APPLICATION NUMBER5412013 IN ORIGINAL SUIT NUMBER307OF 2013 OF THE COURT OF THE MUNSIFF OF CHITTUR. RESPONDENT(S)' EXHIBITS NIL ---------- //TRUE COPY// A.HARIPRASAD, J.

---------- O.P.(C) No.2910 of 2014 ---------- Dated this the 1st day of July, 2015

JUDGMENT
The order passed by the learned Munsiff, Chittur on I.A.No.541 of 2013 in O.S.No.307 of 2013 is under challenge in this original petition.

2. Heard the learned counsel for the parties.

3. Short facts are as follows:Suit is one for prohibitory injunction instituted by the respondent against the petitioners. Prayer in the suit is predominantly for a prohibitory injunction against the petitioners from interfering with the possession of the plaintiff over the plaint schedule property. Ext.P1 is the copy of the plaint. Ext.P2 is the copy of the written statement filed by the petitioners. In Ext.P2, the petitioners/defendants have clearly challenged the identity of the property. That apart, the petitioners have a case that the property claimed to be in the possession of the respondent/plaintiff lies contiguous with the river puramboke without any

demarcating feature. It is also contended by the petitioners that the said area has been in use from time memorial for burying the dead. It is the contention of the petitioners that the respondent trespassed into the river puramboke used as burial ground. Hence, they applied for issuance of a commission to identify the plaint schedule property and the river OP(C) No.2910/2014 2 puramboke with reference to the revenue records and also with the help of a surveyor. That application was dismissed by the court below mainly for the following reasons: Court below found that the suit is one for injunction simplicitor and the question to be resolved is whether the respondent is in possession of the property as on the date of institution of the suit. Court below also noticed that the petitioners do not claim any property in the vicinity of the plaint schedule property. It was also found by the court below that if there is any encroachment made by the plaintiff, it is for the revenue authorities to take action against her.

4. Learned counsel for the petitioners submitted that the court below did not correctly understand the contention of the petitioners. This is no case of any scramble for possession between owners of property adjacent to one another. According to the learned counsel, the petitioners are only protecting a public right to bury the dead in the river puramboke situated on the southern side of the plaint schedule property. Secondly, the revenue authorities, even according to the plaintiff, have not taken any action in respect of removal of alleged encroachment.

5. Learned counsel for the plaintiff/respondent contended that three times the commissioner had inspected the property for various reasons. Copy of the commissioner's report and rough sketch is produced OP(C) No.2910/2014 3 before me for perusal. It is seen that on earlier occasions the commissioner had not identified the properties in accordance with the descriptions in the document relied on by the respondent. Likewise, he has not identified the properties in accordance with the survey demarcations. Learned counsel for the plaintiff contended that in a suit for injunction simplicitor, the crucial question is whether the plaintiff is in possession of the property at the inception of the suit. Generally speaking, it may be true. But, in a case where the defendant sets up a legal right over a portion of the property to bury the dead, the question of 'khas' possession alone may not assume much importance. Similarly, the identity of the plaint

schedule property is specifically denied by the petitioners in their written statement. It is trite law that that a court cannot grant a decree for injunction unless it is sure of the identity of the property with reference to which a decree for injunction is to be passed.

6. It is the contention of the respondent that the petitioners are trying to make a roving enquiry to collect evidence for some other purpose. This submission is strongly opposed by the learned counsel for the petitioners. According to him, the petitioners are only some of the members who are interested in protecting the interest of a large number of persons residing in the locality. They do not lay any claim over any OP(C) No.2910/2014 4 property exclusively belonging to the respondent/plaintiff. Their claim is only in respect of the burial ground over which the respondent is attempting to reach out.

7. Considering the facts and circumstances as mentioned above, the impugned order is set aside. The court below is directed to expedite the trial. After taking evidence in the suit, if any of the parties make an application for issuance of commission for identifying the plaint schedule property with reference to the documents and survey demarcations, the court shall consider the plea and pass appropriate orders so as to enable itself to pass a correct decree in this matter. With these observations, the original petition is disposed of. A. HARIPRASAD, JUDGE. cks

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