

Valsala and Another Vs. Seetha and Others

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Court : Kerala

Decided On : Dec-14-2010

Judge : Thomas P.Joseph, J.

Acts : Code of Civil Procedure (CPC) - Section 10,151

Appeal No. : O.P(C) NO.337 of 2010

Appellant : Valsala and Another

Respondent : Seetha and Others

Advocate for Pet/Ap. : SRI.DINESH R.SHENOY, Adv.

Judgement :

O R D E R

THOMAS P.JOSEPH, J.

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O.P(C) NO.337 of 2010

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Dated this the 14th day of October, 2010

JUDGMENT

Petitioners are the plaintiffs in O.S.No.485 of 2008 of the court of learned Munsiff, North Paravur. That is a suit for injunction to restrain respondents from alienating the suit property or inducting strangers into the said property. Petitioners claimed title and possession over the property along with respondents pursuant to an order of assignment in favour of their predecessor-in-interest. It is stated that the order of assignment was later cancelled by the Tahsildar, according to the petitioners illegally, for reason of transfer of a portion of the property before patta was issued to the predecessor-in-interest of petitioners. Petitioners have challenged cancellation of assignment before the RDO, Fort Kochi vide Ext.P2 and according to the petitioners, the RDO has granted a stay of order of cancellation on 15-12-2007. In the meantime, O.S.No.485 of 2008 is being brought up for trial in the list on 15-10-2010. Petitioners filed two applications, one under Section 10 of the Code of Civil Procedure (for short, "the Code") for stay of trial of the suit until the RDO disposed of Ext.P2, appeal and the other, under Sec.151 of the Code to remove the case from the list. Applications were dismissed as per Exts.P6 and P7, orders. Exhibits P6 and P7, orders are under challenge in this proceeding. It is contended by learned counsel that if the suit is disposed of before the RDO disposed of the appeal petitioners will be put to irreparable loss and injury.

2. So far as Ext.P6, order is concerned, I do not find reason to interfere. Learned Munsiff is correct in holding that Sec.10 of the Code has no application since the RDO is not a court as understood in Sec.10 of the Code. What remained is Ext.P7, order refusing to remove the case from the list. Learned counsel argues that decision of the RDO on Ext.P2, appeal against cancellation of assignment in favour of their predecessor-in-interest has a bearing on the decision in the suit since the claim of petitioners is based on assignment in favour of their predecessor-in-interest. According to the learned counsel, the RDO has passed an order of stay on 15-12-2007 but a copy of the said order has not been issued to the petitioners in spite of application.

3. Having heard counsel for petitioners it would appear to me that the proper course is to direct the learned Munsiff to postpone the trial of case for a period of 45 days from today. In the meantime, the RDO, Fort Kochi can be directed to issue a copy of the order of stay issued on 15-12-2007 in Ext.P2, appeal.

Petitioners shall give a copy of this judgment to the RDO, Fort Kochi for compliance.

Resultantly this petition is disposed of in the following lines:

(i) Learned Munsiff, North Paravur is directed to adjourn trial of O.S.No.485 of 2008 to a day after forty five (45) days from today.

(ii) The RDO, Fort Kochi is directed to issue a copy of the order of stay dated 15.12.2007 in Ext.P2, appeal within a month from this day.

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