

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 7TH DAY OF JUNE 2022 / 17TH JYAISHTA, 1944

OP(C) NO. 863 OF 2022

AGAINST THE ORDER DATED 19.05.2022 PASSED IN I.A.NO.15/2022

IN O.S.NO. 156/2020 OF MUNSIF COURT, KOYILANDY

PETITIONER/PETITIONER/PLAINTIFF :

K.M.ABDUL JALEEL,
AGED 55 YEARS, S/O.HASSANKUTTY, BUSINESS, CHIRAG
HOUSE, P.O. MANDANKAVU, MANDANKAVU DESOM,
NADUVANNUR VILLAGE, KOYILANDY TALUK, PIN - 673614.

BY ADVS.
ABRAHAM MATHEW (VETTOOR)
ANIL ABEY JOSE

RESPONDENTS/RESPONDENTS/DEFENDANTS :

- 1 THAZHE IRAVATH RABIYA, AGED 55 YEARS,
W/O ABDUL SALAM, SWASTHAM, NELLIYOTTUMEETHAL-
HOUSE, P.O. CHERIYAKUMBALAM, CHERIYAKUMBALAM
DESOM, PALERY VILLAGE, KOYILANDY TALUK,
PIN - 673508.
- 2 KATTEENTAPARAMBATH SAKKEER, AGED 55 YEARS,
S/O MAMMU, BUSINESS, KATTEENTAPARAMBATH HOUSE,
P.O. THALIYIL, KARANDODU DESOM, KAYAKODI VILLAGE,
VATAKARA TALUK, PIN - 673508.
- 3 A.K.ABDUL SALAM, AGED 64 YEARS,
S/O AHMMED HAJI, BUSINESS, NELLIYOTTUMEETHAL-
HOUSE, P.O. CHERIYAKUMBALAM, CHERIYAKUMBALAM
DESOM, PALERY VILLAGE, KOYILANDY TALUK,
PIN - 673508.

BY ADVS.
M.PROMODH KUMAR
MAYA CHANDRAN (K/2573/1999)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON
26.05.2022, THE COURT ON 07.06.2022 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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O.P(C).No.863 of 2022

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Dated this the 7th day of June, 2022

J U D G M E N T

The petitioner herein is the plaintiff in O.S.No.156/2020 pending before the Munsiff Court, Koilandy. The respondents herein are defendants 1 to 3 in the above Suit.

2. Petitioner has filed this Original Petition under Article 227 of the Constitution of India challenging the order in I.A.No.15/2022 dated 19.05.2022 in the above case, whereby the learned Munsiff negatived the prayer for appointment of an expert commission to assess the construction carried out by the plaintiff in the plaint schedule building.

3. Heard the learned counsel for the petitioner, Advocate Abraham Mathew (Vettoor) and the learned counsel appearing for

the 1st respondent Advocate Prem Kumar. Notice to other respondents dispensed with.

4. The learned counsel for the petitioner argued that the petitioner obtained the plaint schedule building on the strength of a deed of 'licence'. Later the arrangement was changed as 'lease' and he has been continuing as a tenant in the plaint schedule building. According to the learned counsel for the petitioner, though the Suit was filed as one for forceful eviction of the plaintiff from the plaint schedule building, it is necessary in the interest of justice to assess the value of construction made by the plaintiff in the room. But the court below erroneously dismissed the application as per Ext.P10 order. According to the learned counsel, since the plaintiff spent money to make construction in the plaint schedule room, the plaintiff is entitled to get back the value of construction made by him, that too, with the consent of the landlord.

5. Whereas the learned counsel for the 1st respondent argued that the plaintiff, who filed the present Suit seeking decree

of prohibitory injunction restraining forceful eviction, had filed the expert commission application when the case was listed for trial by the trial court. He submitted that the issues to be decided in this case are;

1) whether decree against forceful eviction is liable to be granted? and

2) whether the mandatory injunction directing the vacant possession of the building by the plaintiff to the defendants is liable to be granted?

In order to decide the said issues, an expert commission's report is not necessary and that is the reason why the learned Munsiff dismissed the application. The learned counsel submitted that, in this backdrop the order impugned is liable to sustain.

6. On perusing the order impugned, it could be gathered that the learned Munsiff dismissed I.A.15/2022 on observing that the assessment of the value of the alleged construction is not a matter in issue in the Suit.

7. In the factual background as narrated, the relevant questions pose for consideration are; what is the purpose of appointing commission for local inspection? Similarly, whether a commission can be appointed for local inspection to note out certain things which are not relevant to decide the issue involved in the Suit?

8. Section 75 of the Code of Civil Procedure deals with the power of the court to issue commission and as per Section 75(b), the court can issue a commission to make a local investigation. Order 26 Rule 9 deals with commissions to make local investigations. As per which, in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court; provided that, where the State

Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Going by the above provision, the purpose of local investigation by appointing a commission is to elucidate any matter in dispute and not otherwise. Order 14 Rule 2 of the Code of Civil Procedure mandates that court to pronounce judgment on all issues. Corollary proposition is that the Court need not decide or pronounce judgment on matters which are not issues of fact or issues of law. Thus the legal position is emphatically clear on the point that a commission for local inspection to be issued only to ascertain matters which are necessary to elucidate the matter in dispute and such commission cannot be appointed on a mere asking by one of the litigating parties.

9. The learned counsel for the 1st respondent submitted that no permission was given by the defendants to the plaintiff to make construction as contended and the licence deed also does not contain any such recitals. Therefore, the plaintiff wilfully not

produced the same also before the Court.

10. In this matter, on a perusal of Ext.P1 plaint, the prayer therein is to restrain the defendants from forcefully evicting the plaintiff from the plaint schedule building. There is no prayer in the Suit claiming the value of improvements. Be it so, the attempt of the petitioner herein to appoint an expert commission to assess the construction alleged to be made by him, is not necessary to decide the fact in issue involved in the Suit or to elucidate the fact in issue. In such cases, appointment of a commission is an abuse of process of court with intent to protract the matter and such practices should be well curtailed.

11. That apart and most importantly, no documents available before this Court even to convince that the defendants permitted the plaintiff to make construction and in consequence thereof the plaintiff effected construction as contended, so as to claim the amount of construction.

12. On appraisal of the materials available, I do not think

that assessment of the construction made by the plaintiff in the plaint schedule building is necessary to decide the matter in issue in the Suit. That apart, if at all the plaintiff effected some construction and he had a claim to get back the money spent for the same, then also, the stage of the building before start of the said construction should have been assessed earlier, that is, before start of the alleged construction effected by the plaintiff. Otherwise, no meaningful assessment is possible as of now. In view of the matter, it appears that I.A.No.3/2020 filed by the petitioner deserves no merit and accordingly the learned Munsiff rightly dismissed the same.

In view of the above discussion, the Original Petition is found to be devoid of any merit and is accordingly dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF OP(C) 863/2022

PETITIONER'S EXHIBITS

- EXHIBIT P1: A TRUE COPY OF THE PLAINT IN O.S.NO.156/2020 OF THE HON'BLE MUNSIFFS COURT, KOILANDY DATED 04-08-2020.
- EXHIBIT P2: A TRUE COPY OF THE WRITTEN STATEMENT AND COUNTER CLAIM FILED BY THE RESPONDENT IN O.S.NO.156/2020 OF THE HON'BLE MUNSIFFS COURT, KOILANDY DATED 26-08-2020.
- EXHIBIT P3: A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER TO THE COUNTER IN O.S.NO.156/2020 OF THE MUNSIFFS COURT, KOILANDY DATED 09-2020.
- EXHIBIT P4: A TRUE COPY OF THE ORDER PASSED IN I.A. NO. 3 OF 2020 (EARLIER I.A. NO. 952 OF 2020) IN O.S.NO. 156/2020 OF THE HON'BLE MUNSIFFS COURT, KOYILANDY DATED 26-11-2020.
- EXHIBIT P5: A TRUE COPY OF THE RECEIPT ISSUED BY THE RESPONDENT FOR RECEIVING A TOTAL AMOUNT OF RS.4,60,000/-DATED 09-04-2021.
- EXHIBIT P6: A TRUE COPY OF THE ORDER PASS BY THE COURT BELOW IN I.A NO.4 OF 2020 (1003/2020) IN O.S NO. 156/2020 DATED 26-11-2020.
- EXHIBIT P7: A TRUE COPY OF THE AMENDMENT PETITION FILED BY THE RESPONDENT AS I.A NO.7 OF 2021 DATED 29-07-2021.
- EXHIBIT P8: A TRUE COPY OF THE APPLICATIONS BY THE PETITIONER TO REMOVE THE CASE FROM THE LIST DATED 18-05-2022.
- EXHIBIT P9: A TRUE COPY OF THE COMMISSION APPLICATION FILED BY THE PETITIONER AS I.A.NO. 15 OF 2022 IN O.S.NO. 156/2020 OF THE HON'BLE MUNSIFFS COURT, KOILANDY DATED 18-05-2022.
- EXHIBIT P10: A TRUE COPY OF THE ORDER PASSED BY THE HON'BLE MUNSIFFS COURT, KOILANDY IN I.A.NO. 15 OF 2022 IN O.S.NO.156/ 2020 OF THE DATED 19-05-2022.