

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 31ST JULY 2008 / 9TH SRAVANA 1930

WP(C).No. 23094 of 2008(Y)

OS.190/1999 of MUNSIF MAGISTRATE, ERATTUPETTA
.....

PETITIONER :

K.A.AUGUSTINE, S/O.AUGUSTHI, AGED 48
YEARS, KATTACKAL HOUSE, KEEZHAMPARA KARA,
KONDOOR VILLAGE, MEENACHIL TALUK.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS :

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1. JOSEPH, S/O.MATHAI, POTTANANIYIL,
POOVATHOD P.O., KONDOOR VILLAGE,
MEENACHIL TALUK.
 2. KURIAKOSE, S/O.DEVASIA, MANGALATHU
HOUSE, ADIVARAM BHAGHOM,
THEKKEKARA MURI, POONJAR THEKKEKARA VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31/07/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

.....
WP(C).No. 23094 OF 2008

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DATED THIS THE 31st DAY OF JULY, 2008

JUDGMENT

Petitioner is the first respondent in I.A.232 of 1999 in O.S.190 of 1999 on the file of Munsiff Court, Erattupetta. Respondent is the plaintiff. I.A.232 of 1999 was filed under Rule 2A of Order XXXIX of Code of Civil Procedure, contending that petitioner violated the order of temporary injunction granted by the court. That petition was originally dismissed by learned Munsiff while granting a decree in favour of respondent. That order was challenged before District Court, Kottayam in CMA 28 of 2007. Learned District Judge set aside the order of the Munsiff and remanded the petition to learned Munsiff, finding that dismissal of the application for the sole reason that suit is disposed is not legal. While remanding the petition, parties were allowed to adduce further evidence. Petitioner thereafter filed I.A.549 of 2008, an application for appointment of a Commission. It was dismissed under Ext.P6 order. This petition is filed under Article 227 of Constitution of India challenging that order.

2. Learned counsel appearing for petitioner was heard. The argument of the learned counsel is that petitioner did not

violate the order of temporary injunction originally granted or the decree subsequently granted and learned Munsiff should have appointed a Commission to find out whether any obstruction was caused or the decree was violated.

3. On hearing the learned counsel and going through Ext.P6 order, I do not find any illegality or irregularity, warranting interference. As far as I.A.232 of 1999 is concerned, court is only concerned with the question whether there was violation of the order of temporary injunction originally granted by the learned Munsiff. The question whether petitioner violated the decree subsequently granted is not a question to be decided herein. Therefore by appointing a Commission, the present stage of the property is not to be looked into, as that is not a relevant question in this writ petition. In such circumstances, I do not find any reason to interfere with Ext.P6 order. After recording the evidence, if court finds that a report is necessary, Ext.P6 order will not prevent the court from appointing a Commission.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-