

(2012) 01 KL CK 0113

In the High Court Of Kerala

Case No : C.R.P. No. 240 of 2006 and W.P. (C) No. 18386 of 2006 L

C. Sanjayan and C. Suresh represented by his Power of Attorney Holder C. Sanjayan

APPELLANT

Vs

A. Raman

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (2012) 01 KL CK 0113

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : Biju M. John, for the Appellant; P. Santhalingam (Sr.) Sri. S. Sharan, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The petitioners in C.R.P.No. 240 of 2006 (C. Sanjayan and C. Suresh) filed O.S.No. 503 of 2005 on the file of the Court of the Munsiff of Chittur against A. Raman, the petitioner in W.P. (C) No. 18386 of 2006, for permanent prohibitory injunction restraining the defendant from trespassing upon the plaint schedule property and from disturbing the peaceful possession of the plaintiffs and the construction activities in the plaint schedule property.

2. The plaintiffs filed I.A. No. 2738 of 2005 under Rule 1 of Order 39 of the CPC for temporary injunction. The trial court allowed the application in part as follows:

In the result, I.A. is allowed in part.

(a) Defendant and their men are restrained from disturbing the peaceful possession of the plaintiffs over the plaint schedule properties and C.R.P. No. from causing the obstruction to the construction of the building proposed to be made in the plaint schedule properties by the plaintiffs as per law through a temporary injunction till the disposal of the suit.

(b) Considering the nature and circumstances of the I.A. there is no order as to costs.

3. The defendant filed C.M.A.No. 7 of 2006 on the file of the Court of the District Judge of Palakkad, challenging the order in I.A.No. 2378 of 2005. The lower Appellate Court allowed the appeal in part. The operative portion of the appellate judgment reads as follows:

Accordingly, the appeal is allowed in part. The order of temporary injunction granted by the Munsiff's Court, Chittur is limited to restrain the appellant from disturbing the peaceful possession of the plaintiffs over the plaint schedule property. However, it is made clear that this order shall not prevent the respondents/petitioners in I.A.No. 2738/2005 in the Munsiff's Court, Chittur from effecting construction over the undisputed portion in accordance with law i.e. 3 metres north of the northern wall of the building existing in the property of the appellant. The trial court shall dispose of the suit as expeditiously as possible. The parties are directed to bear their own costs.

4. The plaintiffs filed C.R.P.No. 240 of 2006 and the defendants filed W.P. (C) No. 18386 of 2006 challenging the judgment of the Appellate Court in so far as the same is against the respective contentions of the parties. The Revision and the writ Petition were filed in 2006. No interim order was passed in the cases. The suit is of the year 2005. It is ripe for trial. The judgment of the Appellate Court stood as such for a period of more than five years. It is not necessary to make any modification to the judgment passed by the court below. All the contentions of the parties are left open to be decided in the suit. It is necessary to decide the suit untrammelled by any of the observations contained in the order of the trial court or in the judgment of the Appellate Court.

5. The court below has considered all the relevant aspects of the case and passed an order protecting the interests of both sides. In the facts and circumstances mentioned above, I do not find any ground to modify or set aside the judgment passed by the court below.

For the aforesaid reasons, the Civil Revision Petition and the Writ Petition (Civil) are dismissed. The trial court shall dispose of the suit as expeditiously as possible.