
(2009) 06 KL CK 0061
In the High Court Of Kerala
Case No : FAO No. 101 of 2009

Fr. Antony Jino George Chakkalakkal and Another	APPELLANT
Vs	
M/s. Malabar Ayurvedic	RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3A, Order 39 Rule 4, Order 43 Rule 1(r)
Kerala Civil Courts Act, 1957 — Section 13, 19

Citation : (2009) 3 ILR (Ker) 34 : (2009) 3 KLJ 26 : (2009) 2 KLT 980

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : V.C. James and George Mecheril, for the Appellant;

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—Eventhough this Court admitted this appeal and had issued notice to the respondent, so far service of notice to the respondent is not complete. Having regard to the facts and circumstances of the case, I do not think that this appeal which is not maintainable should any more be kept pending before this Court Hence the order issuing notice to the respondent is recalled. The respondent herein instituted a suit before the Vacation Judge (District Judge), Thalassery during the mid summer holidays. That suit was to be instituted before the Munsiffs Court, Payyannur which at the relevant time was on vacation. As per the impugned order dated 28-04-2009 in I.A. No. 498 of 2009, the learned Vacation Judge passed an order of ad-interim injunction restraining the appellants herein from trespassing into the plaint schedule property and committing any act of waste therein. The plaint schedule property is having an extent of 6 acres. It is the said order which is assailed by the defendants/appellants in this appeal filed under Order XLIII Rule 1(r) C.P.C. Eventhough by virtue of Section 19 of the Kerala Civil Courts Act, 1957, the Vacation Judge cannot pass any final order in a case of this nature and his order can only be a provisional order, his order must notionally be considered as an

order passed by the Munsiff and such order is appealable. But, by virtue of Section 13 of the Kerala Civil Courts Act, 1957 such appeals are to be filed not before the High Court, but before the District Court or before the Sub court (where the Sub Court concerned is not located in a District Centre and has filing powers) See Viswambharan Vs. Damodaran Nair and Others, .

2. Accordingly, this appeal is held to be not maintainable. The Registry shall return the memorandum of appeal to the appellants for presentation before the proper court. Another alternative available to the appellants is to get the appeal withdrawn with liberty to prosecute the matter before the trial court. Thereafter, he can file a counter to the application for interim injunction, now pending before the Munsiff's Court, Payyannur and seek an early hearing of the matter. It is the case of the appellants that the respondent/plaintiff has been guilty of suppression of facts while securing the order of ad interim injunction. In case the Munsiff's Court, Payyannur is moved by the appellants, that court shall take into account the proviso to Order XXXIX Rule 4 C.P.C and also the time limit fixed under Rule 3A of Order XXXIX C.P.C and pass final orders on the petition for interim injunction after giving both sides an opportunity of being heard.