

(2012) 06 KL CK 0055
In the High Court Of Kerala
Case No : O.P. (C) . No. 1736 of 2012

K. Rajesh, R.P. Vasudevan Residing, P. Jayakrishnan and
Vasudevan Namboodiripad

APPELLANT

Vs

K.M. Vasudevan Namboodiri, K.M. Parameswaran Namboodiri
and Parameswaran Namboodiripad

RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:

Citation : (2012) 06 KL CK 0055

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T.C. Suresh Menon, Sri. P.S. appu, Sri. A.R. Nimod Sri. K.A. Anas, for the Appellant; R.D. Shenoy, for the Respondent

Judgement

Thomas P. Joseph, J.—The Original Petition is in challenge of the exparte, interim order of injunction passed by the learned Sub Judge, manjeri in O.S.No.157 of 2012. Respondents 1 and 2 who claimed to be members of the Mana filed that suit. According to them the Vellayoor Mookambika Bhagavathi Temple and its properties belonged to the Mana as held by the learned Sub Judge in O.S.No.99 of 2005 (which is under challenge in this Court in M.F.A.(HR&CE) No. 228 of 2009). In the meantime, apprehending that petitioners through the Seva Samithi have arranged to conduct festival in the temple, respondents filed O.S.No.157 of 2012 and obtained the exparte interim order of injunction. Petitioners appeared in O.S.No.157 of 2012 and filed counter affidavit opposing the application for injunction. They contended that though in O.S.No.99 of 2005 there is a finding that the temple and its properties belonged to the Mana, it is a private temple and the direction issued by the Commissioner of HR & CE to the Deputy Commissioner to frame a scheme was set aside, this Court in M.F.A.(HR & CE) No. 228 of 2009 has stayed operation of that judgment until further orders.

2. Grievance of petitioners is that though in O.S.No.157 of 2012 Ext.P5, exparte order of injunction was passed on 22.05.2012, the case was posted for hearing

on 25.06.2012 and in the meantime, they appeared in the case and filed Ext.P6, counter affidavit. The application for injunction was posted for hearing on 04.06.2012 but as learned Sub Judge was on leave, the matter is likely to be taken up only after 15.06.2012. Learned counsel for petitioners contended that petitioners have already made arrangements through the Seva Samithi to conduct punaprathishta festival in the temple from 20.06.2012 to 25.06.2012 as revealed by Ext.P2, notice. The total estimate for the festival will come to Rs. 35 lakhs and at this stage if conduct of the festival is prevented, petitioners will be put to irreparable loss and injury. Learned Senior Advocate contends that as seen from Ext.P1, operation of the judgment in O.S.No.99 of 2005 is stayed by this Court in M.F.A.(HR&CE) No. 228 of 2009 until further orders.

3. Having heard learned Senior Advocate, I am inclined to think that the proper remedy for petitioners is either in case there is no possibility of learned Sub Judge resuming charge and deciding the application before the festival is scheduled to commence, to request the learned District Judge concerned to withdraw the case to his court and hear and dispose of the application for injunction as provided under law or, notwithstanding that petitioners have filed a counter affidavit in answer to I.A.No.972 of 2012, challenge Ext.P5, order in appeal since filing of objection to the application for interim injunction and challenging the exparte, interim order in appeal are concurrent remedies. Since the matter, learned Senior Advocate points out, is urgent and since as stated in Ext.P2, notice the festival is scheduled to commence on 20.06.2012 and time is running out, learned District Judge is directed to consider either the request for withdrawal of the suit or hear and dispose of the appeal if preferred by the petitioners as the case may be, as early as possible, after hearing both sides.

With the above direction this Original Petition is disposed of.